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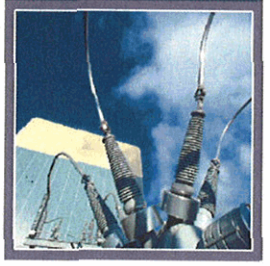

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USAID Regional Center for Southern Africa

COMPARATIVE ASSESSMENT OF ESI POLICIES, LEGISLATION AND REGULATION IN SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

...in collaboration with the REGIONAL ELECTRICITY REGULATORS ASSOCIATION

USAID TASK ORDER 818 – ENERGY PROGRAM LEGAL/REGULATORY POLICY ASSISTANCE TO THE AADC COUNTRIES

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Summary

The United States Agency for International Development's Regional Center for Southern Africa (RCSA) and the Regional Electricity Regulators Association for Southern Africa (RERA), recognizing the need to develop a better understanding of regional legislation and regulations pertaining to the electricity sector, joined forces to begin the effort of assessing this information.

The objectives of this collaboration are:

- To assist RERA gain a comprehensive understanding of the current and expected regulatory structure of the ESI within SADC
- To have RERA disseminate this information to assist existing and nascent regional electricity regulators
- To assist RERA and regional electricity regulators identify best practices
- To assist RERA determine the feasibility of the potential for harmonizing electricity legislation and regulation

RERA and USAID, through their contract with Nexant Inc., undertook a collaborative program to compile and analyze information within SADC on records of policies, legislation and regulations relating to electric sector regulations as administered by members of RERA or their counterparts in SADC, determining key elements and trends. This work would naturally fall into to two phases. First is a research and data acquisition phase and the second is an analytical phase. Given budgetary and time constraints it was agreed to obtain information on 6-7 countries within Southern Africa: Zambia, Namibia, South Africa, Tanzania, Lesotho, Malawi, and Mozambique.

The analysis reveals a high level of diversity and differences in approach but also one element that is common to each jurisdiction analyzed – a major, concerted and apparently ongoing effort in each of the jurisdictions analyzed (in some cases spanning as much as a decade) to review, modernize and reform the legal and regulatory regimes in order to meet changing conditions, create more efficient and economically productive electricity sectors, and to conform to best international practices. Considerable progress has been made in most jurisdictions in a relatively short period, each utilizing quite different reform processes.

In two cases (Lesotho and Tanzania), both commenced quite recently and are still under way or just completed, and in most respects yet to be implemented, has involved comprehensive overhauls of the existing legal/regulatory structures and their ultimate complete replacement by modern legal/regulatory regimes.

In three others (Mozambique, Namibia and Zambia), considerable progress has been made, over a somewhat longer timeframe, in amending the existing legal/regulatory structures in major respects.

In South Africa, whose reform efforts are probably of the oldest vintage, the least visible progress has been made (despite nearly a decade of intense policy debates on reform over the last

decade), but the country has made major progress in analyzing future options for its electricity sector that are important to the region and trade within it. It also appears a break though in its reform efforts, supporting more productive regional electricity trading may be imminent.

Another broad lesson from this review is that the progress in thinking on reform policies has so accelerated that those countries which started on the reform path most recently now appear to be the most modern.

While the review has revealed considerable reform over the last several years in each of these systems, and valuable potential lessons from the experience of each for the others, it is also apparent that each of these reform initiatives have been carried out in relative isolation from the others and, except in one or two cases, with inadequate attention to the regional initiatives in the region such as SAPP and RERA and to the implications of recent Africa-wide initiatives such as the NEPAD Infrastructure Action Plans.

There are also valuable lessons to be drawn in the development of regional electricity trade and regulatory arrangements from the experience of other regions, especially the developments in the ECOWAS region to establish a regional trading and regulatory arrangements, and the OHADE arrangements to harmonize commercial and other laws.

One approach to address these findings would be to create the mechanisms for effective and intensive dialogue between the main players in the SADC electricity sectors on these issues.

Introduction

The Regional Electricity Regulators Association (RERA) is comprised of the following Southern African electricity regulators: Zambia, Namibia, South Africa and Malawi. This body was formed, in part, to assist the region develop effective legislation and regulations for the electricity sector and to serve as a center of excellence where informed information could be effectively disseminated. The RERA Secretariat is currently located in Windhoek, Namibia at the Electricity Control Board's (ECB) offices.

The four founding members have collectively decided on activities to undertake on behalf of RERA. One of these activities is the subject of this report. The Energy Regulatory Board of Zambia, in this case, is leading RERA's efforts to assess existing legislation and regulations within SADC.

RERA is collaborating with the RCSA through their contractor, Nexant, Inc.

The implementers chose the countries to be assessed and developed the framework for the assessment. The countries are: Zambia, Namibia, Malawi, South Africa, Lesotho, Mozambique, and Tanzania. A comprehensive matrix of the principal provisions that typically comprise a quality legal regime for the electricity sector and its governance and regulation was developed. This matrix served as the principal tool to guide these efforts.

The current laws and regulation, and related policy documents (national policy statements, White Papers, etc.) and, where appropriate and helpful, drafts of proposed legislation (e.g. in the legislative process) were obtained and assessed. This analysis necessarily took account of the vintage of the legislation and other documents reviewed and of the status of reform efforts in the jurisdiction that have had or may have a significant impact on these documents.

Based on this review and analysis, in five of the cases, a country-specific matrix was prepared, itemizing and where appropriate commenting on the categories of legal provision covered, with a view to maintaining a reasonable balance between the detail of provisions and the ability to use the matrix as a tool for dialogue over comparative best practices and regional harmonization. In the case of the sixth, South Africa, the matrix was not found useful because of a protracted reform debate but was substituted by a more detailed description of the elements of this reform debate and the surrounding circumstances, and of the current status of reform initiatives, in the verbal analysis document.

This matrix analysis was then, in each case, supplemented by a verbal description of the major elements of each legal regime and, based on the collective experiences of the team, strong points of each regime (if implemented properly) were identified and the apparent shortcomings of each – all with a view to providing useful comparisons with other regimes in order to improve each through constructive dialogue and interaction.

An important aspect of this review was the analysis of those elements that might enhance the effective implementation of the international regimes and initiatives in the SADC region, such as SAPP and RERA, and any shortfalls in this regard.

This report is organized as follows:

- Summary
- Introduction
- Country summaries and position assessments
- Country matrices

1.1 EVALUATION OF ZAMBIA ELECTRICITY LAWS: SUMMARY

Zambia's electricity laws comprise two complementary statutes, jointly enacted in 1995 – the Electricity Act and the Energy Regulations Act ("ERA") (jointly "the legislation") – one of the first such reform overhauls in Africa. Zambia recently undertook a major review and update of this scheme, resulting in the Energy Regulation Act of 2003 and a bill to amend the Electricity Act. Also under consideration is a separate bill to develop a comprehensive rural electrification scheme.

The legislation (with proposed amendments) covers all electric entities (except generation for own use below 100 KW) and requires licenses of each entity as the basic regulatory tools. It is to be administered by the Energy Regulation Board (ERB) which is broadly empowered to issue licenses, investigate consumer complaints and establish safety and reliability standards. It also requires a basic obligation to serve and constraints upon a licensee limiting supply.

The ERA contains sound detailed provisions for the licensing regime – applications, conditions, duration, transfer and revocation; inspections and financial provisions; and for internal operation of the ERB. Some level of "due process" is incorporated in key parts of this scheme, e.g. in revocation procedures, with limited recourse to the courts. However, more specific procedural rights (at both the Minister and Board levels) may be necessary in some areas such as license cancellations, and inspection rights, especially if the sector becomes more deintegrated and competitive and if private rights are affected.

The ERB is given most of the important basic functions to regulate effectively – to issue licenses, monitor sector performance and investigate complaints. Importantly, it is empowered to promote and develop rules for access and competition in conjunction with the Competition Commission and to proscribe" undue discrimination"; to establish environmental standards in conjunction with the Environment Council; and design and safety standards in conjunction with the Bureau of Standards. It is also subject to important disciplines on conflicts of interest and on information disclosure and protection.

As Zambia is contemplating industry restructuring, competition and private sector participation, one area of legislation that needs attention is an explicit regime (legal and regulatory) for moving in that direction; and perhaps, at that point, a further review of the overall legal/regulatory structure. An important adjunct to movement is this direction should be the development of an explicit and updated regime for regulation of accounting, auditing and financial practices; and a review of the way the ERB itself is funded.

1.2 POSITION PAPER—ELECTRICITY LAWS OF ZAMBIA: CONFORMITY WITH INTERNATIONAL GOOD PRACTICES

A. Introduction

The purpose of this report is to identify the areas in which Zambia's electricity laws (including those relating to the regulation of the sector) conform to international good practices in this area (identifying specific provisions that may be good examples for other jurisdictions) and areas where they have shortcomings in achieving this goal. This report is based upon a provision-by-provision analysis of the basic laws of Zambia in this area. The results of this analysis are reflected in a matrix that identifies areas of coverage and non-coverage, with commentary to elaborate upon specific provisions. The matrix then identifies specific provisions, which provide "good practice" examples that may be helpful to other jurisdictions in the region.

The ensuing narrative report discusses the major issues arising from this analysis. It suggests where major improvements could be made in the existing (or imminent) legislation to conform the legislation to good practices as they may be applied in the SADC region and as they may serve the goal of regional harmonization. These goals, in turn, are pursued to facilitate the benefits of more efficient inter-country and regional trading arrangements and enhancement of productive investments in the sector's growth on a regional basis in order to reap the full benefits of scale economies and regional integration.

B. Current Laws

The basic electricity legislation in Zambia currently consists of two basic and complementary instruments – The Electricity Act and the Energy Regulation Act, both enacted on 28th April 1995. Both these Acts were recently reviewed in what was apparently a comprehensive update effort. This has resulted in the enactment of an Act to amend the Energy Regulation Act of 31st December 2003; and a Bill to amend the Electricity Act, which, at the time of working this report, was still in the legislative process. As both these amendment instruments were apparently part of a concerted review of the 1995 legislative package, this memorandum is based on a review of both amending instruments, recognizing that the second could be amended (or in the extreme but unlikely case not enacted at all).

Another very important but discrete bill, that in its current form would institute a comprehensive rural electrification (RE) program in Zambia, will also be reviewed in a separate section at the end of this memorandum. There is some risk in reviewing bills still in the legislative process where they could be substantially amended or even not enacted at all; and whose timing, if enacted, is uncertain. However, we believe it would be seriously remiss to ignore these bills simply because of the timeframes of this review. These bills make major important changes to older regimes and, in some cases such as the RE, would add important new features (that are high on government agendas) to the legislative framework.

What this record reflects is that the electricity sector in Zambia has been under review and steady progress made on its reform since the early 1990s.[1]; and that the government has adopted a policy of ongoing or frequent review, and incremental reform, as needed. This approach should serve Zambia well, and perhaps other countries in the region, as the region's domestic markets, their structure and their regulations change, and as these markets become more interdependent and integrated under the umbrella of SAPP and under the auspices of SADC. This approach may be contrasted to the "big bang" approach to legislative reform for the sector adapted at the national level, for example, in the USA and the UK. Each approach has its merits and difficulties. The ideal may be some combination of the two, tailored to the developments and time frames of the country concerned.

C. Overview Analysis of the Laws

1. The Electricity Act 1995: Review and Evaluation

The Act establishes the basic requirement on anyone involved in any specified aspect of the electricity business (as defined in "undertaking") to comply with both Acts. This includes all generating stations over 100 KW and even those under 100 KW that supply others – only those under 100 KW solely for the generator's own use are exempted.

The Act also requires the Minister's approval for decreases or increases in rated generating capacity of any generating unit that is part of the interconnected system; and the Amendments now allow an appeal process against denials of applications. Notably, the Amendments expand the regulation of purchases from outside Zambia, requiring applicants to provide the Minister with a full report on their proposals for imports and permitting appeals to the High Court from refusals by the Minister.

This structure suggests a relatively closed system that is subject to pervasive regulation but not obviously competition.

The Act provides for a basic obligation to serve all consumers who make satisfactory contractual payment arrangements. The Act does not permit reduction in supply unless justified by a customer's failing to pay or comply with license conditions or by causes beyond the supplier's control.

The Act also provides for broad powers of the regulator, the Energy Regulation Board ("ERB"), to suspend licensees for cutting off supply or for not acting in the public interest and to provide for caretaker operation until the fault is cured or, in the event of failure to cure, revocation of the license (subject to some due process) and for interim operation until a new supplier is found.

Moreover, like some other jurisdictions, the Act requires the consents of local authorities for licenses issued within their areas of jurisdiction. Refusals for such consent are, however, open to appeal to the Board on grounds of unreasonable withholding. The 2003 amendment adds

[1] An early indication of that commitment was the publication in 1994 of a major government policy document on energy titled "National Energy Policy" (Ministry of Energy and Water Development, May 1994).

an important additional requirement in such areas as a prerequisite to a supply license – an environmental impact assessment report.

The Electricity Act contains detailed provisions relating to the acquisition of lands for electricity purposes, including detailed procedures for the compulsory acquisition of lands; for way leaves over land; and for access to land or rights of entry.

The Act also contains provisions typical of older statutes relating to trees and buildings interfering with or obstructing transmission lines, the breaking of streets and compensation for damage due to such "works".

The Act also contains traditional proscriptions on and penalties for diversions of or interference with electricity supplies and on providing false information or failure to execute ERB or government orders.

General provisions grant rights of entry and inspection of both operators and customers' premises, require the provision of information, and require the notification of accidents.

The Act also gives the Minister broad powers to promulgate and enforce regulations for the industry on matters as broad ranging as maintaining of supply and standards for building, installations, etc. Specific provisions cover the service of notice and documents.

While somewhat modernized by the 2003 amendments, the Electricity Act in many respects resembles many of those typical in Commonwealth countries developed earlier in the 20th century. It presupposes the existence of a comprehensive (and usually fully or partially integrated) monopoly provider of electricity; and it does not envisage the development of a deintegrated structure, and the potential for competition in some parts of it.

While the approach adopted of ongoing and incremental review has worked well to date, the time may be approaching when the government would be better served to undertake a fundamental review of the precepts underlying the legislative framework, as has occurred for example in countries such as Tanzania and Uganda (and has been underway for some time, though moving more slowly, in South Africa). That review might anticipate or at least enable the restructuring of the electricity sector, or certainly the development of disaggregated and possibly competitive sub sectors or entities within it. It might provide the framework for new market entrants and enable the movement over time towards more competitive, even real time trading, market structures.

2. The Electricity Regulation Act 1995: Review and Evaluation

Enacted simultaneously with The Energy Act 1995, the Electricity Regulation Act ("ERA") represents probably the first initiative in the SADC region to establish the legal framework for a modern independent regulatory regime for the sector [2] or for several sectors, e.g. in the "energy" as opposed to "electricity" area.

[2] While a regulatory body, the National Electricity Regulator (NER), was also established in RSA in this era, it functioned for several years under interim legislation and there have been several initiatives to create a modern

The Act establishes the Energy Regulation Board (ERB) as a body corporate, with the general ability to appoint staff, inspectors and general power to delegate Board functions to staff or to subsets of the ERB. The 2002 amendments expand this ability and add the specific posts of Executive Director and Secretary.

The ERB is given general powers to monitor sector performance and (in an important explicit addition in the 2003 amendments) to issue licenses. It is also empowered to investigate consumer complaints as to price adjustments by and services provided by "undertakings" (the regulated entities).

Important features of the ERB mandate are to investigate and monitor competition levels and structures within the energy sector; to promote access and competition; and to develop specific rules to promote competition (an important 2003 addition) in conjunction with the Zambia Competition Commission. The last of these features provides a basis for developing an effective working relationship between the two critical institutions that have to be coordinated as competition develops in electricity – the general competition enforcement authority and the sector-specific energy regulator. This cohesion is a special challenge in most SADC countries where both institutions are quite new[3]. For example, in RSA, the competition regulator was only formed a couple of years ago.

Another important feature, refined in the 2003 amendments, is the requirement on the ERB, in conjunction with the Environmental Council of Zambia, to formulate measures to minimize the environmental impact of the production and supply of energy.

The ERB is also empowered to establish design standards for a safe and reliable energy supply in conjunction with the Zambia Bureau of Standards.

As with many modern regulatory regimes, the ERB adopts the license as the principal regulatory tool. All electricity functions (generation, transmission, distribution and supply) are required to be licensed, with penalties for unauthorized operation. Section 17 also gives the ERB the power to order closure of unlicensed activities and, if necessary, to enter premises to enforce that.

Section 9 of the ERA sets forth a clear process for applications for licenses, with adequate opportunities for objections and responses ("due process"), including the discretion to hold public meetings; a standard application to be developed by the Minister; rights of stakeholders to inspect it; and standards for review by the Board. Generally, these provisions meet the international standards for a license review process. One minor concern is the ability of the Board under subsection 9 (3) to reject an application without the above process if this serves "the public interest". The Board would do well to elaborate how it will apply this standard – i.e. to set clear criteria for acceptance/rejection.

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statute for it. These two regulators, the ERB and the NER, jointly undertook the first initiative to establish RERA in 1997.

[3] Zambia was probably the first to have both.

Section 12 contains a detailed list of the types of conditions that may be included in licenses – including those relating to fees, information and accounts and requiring approval by the ERB for the location and construction of common carrier facilities; requiring licensees to refer matters to the ERB for determination or to arbitration and to comply with Board directions. It gives the ERB the ability to impose fines and to vary license conditions to counter repeated violations.

One explicit regulatory standard that is singled out to be included in license conditions is a prescription on licensees exercising undue discrimination against, or undue preference for, any regulated person or class of persons.

While quite general and limited as to explicit regulatory standards, these provisions provide a clear and comprehensive enabling environment for the ERB to regulate aspects of the sector through application and enforcement of license conditions. The more these are spelled out with clarity as to their application at the outset, the better will be the environment for private investment in the sector.

The Act also lays out clear but flexible provisions as to the duration of licenses and the transfer of licenses (the latter subject to ERB consent; but consent is only to be withheld on a finding of prejudice to the public interest). While very dependent on effective application by the Minister or ERB, these provisions also appear adequate and clear.

Section 15 sets forth clear grounds for revocation or refusal to renew a license – repeated condition violations or violations of conditions specifically identified as grounds for revocation if violated; or serious public complaints. In each case, the licensee is granted an opportunity to be heard and a right to stay and appeal adverse decisions to the Minister. The Minister is to render the final decision, subject only to appeal on points of law.

While broadly adequate, because of the importance of, and the ability of the sanctions to potentially undermine long term capital-intensive investments in the industry, the law (or perhaps rules or regulations to implement the law) should expand the "opportunity to be heard" requirement into a full due process right at both the Board and Ministerial levels. As the sector deintegrates and moves towards business-oriented entities (whether publicly or privately owned), and especially if external investment in the sector is sought, the right of Government to cancel what may be very long term licenses designed to produce revenue streams to pay back substantial investments has to be carefully circumscribed. The right to cancel should only be capable of being exercised under conditions clearly defined in advance of licenses being granted. There should be comprehensive proceedings with adequate opportunity to review all the facts and justifications for actions and make all the arguments at each important phase in a revocation process; and due compensation for assets taken over or stranded by a revocation should be guaranteed.

The provision in sub-sector 16 (3) for final appeal to the courts on limited legal grounds adds an important dimension to these safeguards.

Section 18 of the ERA grants broad powers to Government inspectors to enter premises for any legitimate purpose relating to Government oversight of the industry, including the right to review books and records, articles manufactured and to inspect machinery and facilities. Premise managers who obstruct, or do not provide "reasonable assistance" to inspectors, or who provide false information, shall be guilty of a criminal offence.

While these provisions are appropriate to ensure full Government oversight of the technical aspects of the sector, they are one-sided in the sense that they give no protection whatsoever to premise owners/occupiers against unreasonable or abusive action by inspectors. This provision should therefore be balanced by due safeguards, e.g. requiring adequate prior notice of the (reasonable) time of the inspection and its purpose (unless a special case can be made for "midnight raids"); and by reasonable notice and timeframes to correct faults, e.g. in equipment. New technical or operating requirements imposed by inspectors that significantly raise operating costs might also be subject to review by the ERB as to their overall reasonableness (e.g. on petition from the premise owner).

Section 20 deals with important financial matters of the ERB. In addition to funds appropriated by Parliament (the normally accepted way of funding the ERB activities – clearly a government function), the ERA also permits two revenue sources – the ability to make "grants or donations" to the Board and the ability to receive funds that "vest in or accrue to" the ERB, including fees for programs or services, raising loans etc., subject to the Minister's approval. While common in many of the older statutes in Commonwealth countries, the consultant questions the propriety of these provisions in the context of a modern regulated electricity sector which may have multiple industry players driven by appropriate commercial motives. While the Ministerial approval requirement provides some safeguards, these provisions expose the ERB to the potential for undue influence, or at least the perception of undue influence, by financial actions of regulated industries (e.g. through loans/grants or the control of fund-raising programmes).

As the industry evolves into more disaggregated, commercial structures, the consultant believes it would be a good time to review the whole financing structure of the ERB. One option for financing the ERB adequately would be to impose an appropriate levy on industry participants (e.g. on a per KWH produced or sold basis). This would create a transparent and non-discretionary funding source from the industry itself – one that is also quite stable and not subject to the whims of the Government budgeting process. It would assure a steady, adequate funding source that is critical to the long-term stability of the ERB.

The ERA (section 25) also contains appropriate and adequate provisions governing the accounting, auditing, and reporting of its financial affairs, with oversight by the Minister and National Assembly.

Part VI of the ERA contains broad provisions against nondisclosure of information by sector entities with criminal sanctions for violations. Again, as the industry moves towards introducing more players and private sector entrants, this provision should be reviewed (and perhaps revised) to ensure that it does not restrict the appropriate flow of information for

commercial and for regulatory reasons (the latter usually subject to restraints on disclosure of confidential or commercially sensitive information).

The ERA contains a detailed and clear section on the serving of notice (presumably in accordance with current legal requirements in Zambia). It also contains an important section enabling the Minister to make regulations for the sector, or tailored to sub sectors thereof, by statutory instrument, to be consistent with the Electricity Act and regulations there under (where the Minister has similar authority), on matters as broad ranging as license application formalities, quality, safety and reliability standards; and safeguarding against and reporting accidents. While this broad authorization is appropriate, the Government should consider delegating some of these functions, e.g. on license applications, to the ERB on the basis that they fit within the ERB's sphere of influence and expertise and that the ERB therefore has more expertise than the Ministry in these areas.

Finally, the ERA contains appropriate savings and transitional provisions.

The all-important provisions relating to the membership and administration of the ERB are contained in the Schedule to the ERA. The 2003 Amendment makes an important change in that all seven members of the Board are to be part-time members (in the 1995 Act, three were to be full time), apparently without remuneration other than expenses. The 2003 Amendment also adds more detailed criteria as to qualification, experience and areas of expertise of Board Members. While these criteria are welcome, the reasons underlying the movement to a completely part-time Board should be examined. Generally, the experience of part-time Boards (including some in the region) has been problematical as regulation of the sector becomes more intense and demanding; and the problem of selecting the best candidates without conflicts of interest will become more difficult as the sector deintegrates and/or privatizes. However, as the change to part-time membership was made after a number of years of operating experience of the ERB, there is presumably an articulated rationale for the change.

The Schedule to the ERA also contains well-seasoned provisions relating to disqualifications from appointment and to the corporate seal. The 2003 amendments also clarify a limit on tenure of Board Members to two three-year terms; and a revised and more limited list of grounds for vacation of office. The most notable change is to the prohibition on the acquisition of a license in the energy sector; the apparent narrowing of the 1995 prohibition may also merit some examination.

The 2003 amendments to the Schedule also provide an expanded and updated section on the conduct of Board meetings; and, notably, the requirement to formally meet at least once every three months and the ability to invite non-members to participate in meetings. The 2003 amendments repeat the ability of the ERB to form committees. They add a good standard provision on disclosure of personal interest in a matter, and non-participation in its consideration; and a new and appropriate provision on the non-disclosure of information obtained in the course of regulatory functions. The Schedule also provides a standard immunity from legal actions for actions taken in the performance of regulatory functions.

2. Overview of Legislation

Overall, the ERA provides for a comprehensive and reasonably modern licensing regime for the electricity sector. While quite general in many places, it does provide important enabling authority to develop more detailed regulations as conditions or developments warrant.

For example, it does not contain some of the more explicit provisions that might relate to a more disaggregated and competitive sector, e.g. as to cross-ownership or industry reorganization. As developments occur in these areas, these changes could be accomplished by developing more detailed and dynamic regulatory rules in these areas (perhaps authorized by discrete legislative amendments), ideally under the close supervision of the ERB – a feature common in advanced regulatory systems.

The 2003 amendments have added some important substantive, procedural and institutional provisions; and this model, frequent legislative reviews and updates, may be the preferred way to move forward in the future for other jurisdictions that have already undertaken broad-brush reviews, e.g. Tanzania.

One area that may require more attention in Zambia is the development of more explicit accounting, auditing and financial reporting requirements for all industry participants and clear related provisions to protect confidential and commercially sensitive information.

Moreover, in some areas (such as license suspension or termination) more detailed procedures and safeguards, and perhaps review and appeal mechanisms, should be considered.

Overall, the ongoing process of legislative reform in Zambia has produced sound legislative coverage of most traditional areas of electricity provision and regulation. As Zambia contemplates sector restructuring and the introduction of competition, new legislative initiatives may become necessary and perhaps, at some later point, broad overhaul of the basis legislative framework.

2.1 EVALUATION OF NAMIBIA ELECTRICITY LAWS –SUMMARY

The evaluation focused on the two complementary legal instruments that compose the statutory scheme – the Electricity Act 2000 and the Electricity Regulations which becomes effective soon thereafter; and on the 1998 Energy White Paper which provided the policy base for this scheme. The approach enunciated is to create a balance between government regulation and private investment and to explore possible rationalization and restructuring of the industry, including the introduction of competition and privatization.

These instruments provide a comprehensive scheme for the establishment of a regulatory entity and, as its principal mechanism, a comprehensive licensing regime for all sector entities over a minimum size. Provisions as to appointments and operations of the Board are in line with accepted international practices. Overall, the scheme creates a comprehensive, integrated and quite modern legal framework for the sector.

Two major concerns are:

(a) that the functions of the regulatory Board are only advisory to the Minister in critical areas such as the issue transfer and cancellation of licensees and that the discretion of the Minister in making critical decisions in these areas appears largely unfettered; and

(b) the relative lack of clear and defining standards for the Minister's making such decisions.

Over time, as the regulatory Board's capabilities and experience develop, these functions should devolve to the Board under clear regulatory standards to discipline its actions.

The Act imposes important conditions on licensees, including that of open access.

Other matters that deserve future attention include:

(1) The need for a clear, transparent method for funding the Board's activities; and

(2) The potential for both the Minister and the Board to become unduly burdened by the quasi-judicial roles in which each is placed by the Act's provisions for appeals of regulatory decisions (to the Minister) and for the Board to conduct investigations; and

(3) The relationship of the economic regulatory regime in the Act to the competition laws as they are developed and applied to the sector once competition is made possible.

2.2 POSITION PAPER—ELECTRICITY LAWS OF NAMIBIA: CONFORMITY WITH INTERNATIONAL GOOD PRACTICES

A. Introduction

The purpose of this report is to identify the areas in which Namibia's electricity laws (including those relating to the regulation of the sector) conform to international good practices in this area (identifying specific provisions that may be good examples for other jurisdictions) and areas where they have shortcomings in achieving this goal. This report is based upon a provision-by-provision analysis of the basic laws of Namibia in this area. The results of this analysis are reflected in a matrix that identifies areas of coverage and non-coverage. It provides commentary on specific provisions and identifies those that may be "good practice" examples for other jurisdictions.

The ensuing narrative report discusses the major issues arising from this analysis. It suggests where major improvements could be made in the existing legislation to conform it the good practices as they may be applied in the SADC region and as they may serve the goal of regional harmonization. These goals, in turn, are pursued to facilitate the benefits of more efficient inter-country and regional trading arrangements and enhancement of productive investments in the sector's growth on a regional basis in order to reap the full benefits of scale economies and regional integration.

B. Current Laws

The basic electricity legislation in Namibia currently consists of two basic and complementary instruments – the Electricity Act 2000 (signed by the President on 24/12000 and made operational on 5/7/2000) and the Electricity Regulations: Administrative, promulgated to come into effect on July 12, 2000, pursuant to that Act ("Regulations").

These legislative actions were preceded by the publication in May 1998 of a detailed (62 page) Energy White Paper by the Ministry of Mines and Energy, the result of a two-year effort with international input. Its philosophy is to balance the Ministry's interest in attracting private investment with the appropriate level of government regulation and to explore the "possible rationalization and restructuring" 0f the electricity sector, as well as the introduction of competition and privatization. The White Paper overtly refers to the drafting of the new electricity legislation. Because this White Paper was obviously one of the conceptual building blocks for the 2000 legislative actions, they will be analyzed in the context of the policies set forth in that White Paper.

C. Overview Analysis of Laws: Electricity Act 2000 and Administrative Regulations.

The Act does two fundamental things – the establishment of a regulatory entity specifically for the electricity industry (Parts I and II) and the establishment of a comprehensive licensing regime for all electricity activities (over a certain size) to be carried out by entities within the industry (Parts III and IV). A number of other matters, such as appeals, powers of inspection and offences are dealt with in a catchall Part V of the Act. The Administrative

Regulations supplement parts of the Act with discrete, more detailed provisions and are best analyzed and reviewed as a supplement to the Act rather than a separate cohesive instrument. Hence, elements of both may be discussed together below:

(1) Establishment of Electricity Control Board ("Board"): Legal Status

The Board is constituted as a regulatory body with distinct juristic personality.

(2) Functions of the Board

While the Act gives only limited functions to the Board, falling short of the scope of activities of most independent regulators, these are considerably expanded by section 2 of the Regulations (AR) – "Functions of Board"; and the two are best analyzed as an integrated instrument.

The Board is to regulate licensees subject to clear standards (efficiency, economy and reliability) and the goal of meeting all reasonable electricity demands and subject to government policy. AR 2 (1) (b).

While this provision suggests an appropriate role for the Board in exercising regulatory control over the sector and while the constraint (already in the Act) of doing so "in accordance with prevailing Government policy" is a normal constraint on independent regulators, the Act itself potentially constrains the authority (and therefore the effective discretion and independence) of the Board. It requires that the Board make "recommendations to the Minister" as to such basic functions as "the issue, transfer, amendment, renewal and cancellation of licenses" and the "approval of conditions" for the supply of electricity.

This provision appears to place most of the major regulatory decisions relating to licenses at the ultimate discretion of the Minister and does not set forth the requirements and standards, or, as important, the timeframes within which the Minister shall exercise his discretion as to these matters. The provision appears to give the Minister unfettered discretion as to these matters, even as to timing. If this is the case, the Minister could in effect veto a decision of the Board by simple inaction and perhaps without even a statement or explanation as to why action has not been taken or when it might be.

It may be that the Minister's role is intended to be a purely formalistic one, perceived as required under the Constitution, i.e. to simply implement the Board's decisions or ensure implementation thereof. (This argument made to justify the role of the Minister in Tanzania). If so, this should be spelled out specifically; and clear guidelines and deadlines for Ministerial action set forth.

If, on the other hand, it is intended that the Minister may exercise discretion on all of these matters, this should be set forth specifically and the matters, standards for exercise of the discretion, and timeframes for action all made explicit. This elaboration should then be subject to scrutiny and comment as to how this discretion may affect the standards of independence of the regulator and its adequate empowerment.

The reason this is so important is that, if the ultimate regulatory decisions are perceived (correctly or not) as being made in a "black box" of unfettered ministerial discretion, and potentially subject to influences exerted behind closed doors, not through participation in the formal stakeholder processes of the Board, this could undermine the entire credibility of the regulatory scheme and act as a serious deterrent to private sector investment in the sector, one of the stated goals of the White Paper

Another area in the law that may require attention are the requirements in section 3 of the Act that the Board shall advise the Minister of matters relating to the industry and may carry out such investigations as the Minister deems necessary. While the first is a normal and appropriate requirement, it may be viewed as subject to abuse if tied to the Minister's discretion to make decisions that should be made by the Board (see above); and the Board's effective functioning could be undermined if it is loaded down with investigation that are not related to its central functions. As long as it is clear that the Board's independence and effectiveness are not undermined by these functions, and that the Board will have a real discretion to turn down unduly burdensome requests by the Minister, these provisions are not per se problematical.

The other functions of the Board (e.g. as to regulatory tariffs and quality of service) and the standards governing its operation (e.g. as to acting in a "fair and transparent" manner and having "regard to promotion of health, safety and the environment") all appear appropriate and sufficiently comprehensive to permit it to operation effectively.

The requirement in Section 3 (1)(c) of the Act that the Board act as a mediator for the settlement of disputes on a variety of specified matters also establishes a quasi-judicial function for the Board that is quite normal for regulators. However, the absolute requirement that the Board "must" act in this role on the basis of any request by the specified entities exposes it to the danger of becoming overwhelmed by the requirement to resolve disputes that may have little importance to its primary regulatory function and being forced to neglect matters that do. The Government of Namibia may wish to consider two possible solutions to this issue.

Giving the Board the discretion to refuse to hear such disputes and permitting them to devolve to possible resolution in other fora, such as the courts or specially constituted consumer complaint fora; or

(b) Requiring that all individual customer complaints (e.g. as to service or billing) go directly to specially constituted consumer complaint fora, hence limiting the type and volume of matters submitted to the Board. This may or may not be combined with the discretion suggested in a) – allowing the Board to refuse to hear some of the other more central regulatory disputes and leave them to the courts.

(3) Developing the Board: Institution Building

(a) Appointments

The process and standards appear to be in line with accepted international practice, e.g. as to the criteria for appointment, tenure and removal. While the Minister has the power both to appoint and remove, this is done subject to statutory criteria (for appointment) and for good cause, subject to an opportunity to be heard, i.e. due process (removal).

The credibility of this power of appointment and removal by the Minister in serving the goal of best practices could be strengthened by a requirement (which could be added by a secondary instrument, i.e. without statutory amendment) that the Minister rely on (or, in the case of appointments, choose from) recommendations of a "blue ribbon" expert panel the Minister could appoint. Such a mechanism has been adopted (even by statute) for example by some of the States in India in establishing regulatory bodies.

(b) Operation of the Board

The provisions in the Act appear to be in line with accepted practices including the important requirement of disclosure of interests. In light of the rash of scandals in the U.S. and Europe that raise issues as to corporate board oversight of management, this section should be reviewed from time to time to see whether its scope should be expanded (e.g. as to information disclosure) or new protections adopted.

(c) Financial Provisions

The Act (Sections 12-16) contains detailed provisions as the Board should be funded, levies imposed on the sector and the Boards financial reporting, accounting and audits. These provisions appear thorough and in general conformity with accepted international practice, but raise two apparent issues.

(1) Whether the funds of the Board should, without greater safeguards, come from "any other source" (subsection 12(l)(g)) or have loans, donations or grants (subsection 12(1) (d) and (f)). While the latter may only be acquired with the approval of the Minister and concurrence of the Minister of Finance, further protection for the Board (and these Ministers) could be provided by including standards as to the source (not, e.g. regulated entities), purpose and perhaps the dimension of these funds.

(2) Another way to address this concern would be to require that all or the bulk of the funds of the Board come from the levy on licensees permitted under Section 13, perhaps eliminating altogether the need to rely on sources such as those identified above (or perhaps to limit them to "true-up" funding between budget cycles). This might be achieved by the Minister exercising his authority under section 13 (if he hasn't done so already) to establish a workable formula for a levy on licensees (typically to be reflected in tariffs to consumers). Once it is established that this funding process is working well to fund the Board (once it is fully operational), Government should consider repealing some of those provisions in subsection 12(1) that may be subject to abuse, as discussed above.

(d) Licensing of Sector Entities

The other major feature of the Act is the adoption of licensing regime as the primary mechanism for regulation. The Act appears to provide for the principal features of a licensing regime in accordance with accepted international practice. There is only one major issue of concern and two other issues which may raise questions as to best practices:

(1) The Minister has the power under subsection 18(6) to either grant or refuse applications to issue a license. While section 19 does set forth certain useful criteria for making this decision, (including a laudable mandatory requirement to consider impacts on the environment and on the rights of others), the Act would be greatly strengthened by providing a clear and defining set of standards that the Minister must apply in making that decision. One complication of this subsection is whether the Minister has the expertise to decide on licenses effectively or whether he would be dependent on the Board to provide that expertise. If the latter is the case, it raises the issue of whether the Board itself should make the final license award decision (subject perhaps to appeal to the courts for failure to follow the required processes or standards). The Act apparently tries to strike some balance between the authority of the Board and Minister; but, as the above discussion suggests, this may not work very well. It is recommended that Government visit the issue at the next appropriate occasion.

(2) The duration of licenses, and their renewal (section 21) appears to be totally at the discretion of the Minister. Should there not be some statutory standards for these timeframes; and should not the growing experience of the Board be utilized in exercising judgments in this area.

(3) The procedures for the transfer and amendment of licenses appear essentially similar to those for the granting of licensees and hence are subject to the same evaluation as to their general conformity to accepted international practice but subject to the same concern as to the relatively unconstrained authority of the Minister in this area.

(e) Obligation of Licensees

This Part IV of the Act contains important substantive legal requirements on licensees that are central to effective regulation of the sector:

(1) A basic obligation to provide service to any one who applies and can make satisfactory payment arrangements. This "obligation to serve" is fundamental. The only concern with this simple provision is whether it is too restrictive in imposing a strict standard as to a customer "making satisfactory arrangements to pay", e.g. as to low income or rural customers who may not have access to necessary credit mechanisms and may have to rely, temporarily or in some cases permanently, on cross-subsidizations to be served.

(2) Section 27 gives the Board important authority to effect changes in license areas for the purpose of rational organizations of the industry, a power that will facilitate restructuring. The only issue here is the assurance of "just compensation" by the Board and due process in determining it – a matter that the appeal process in section 34 should resolve.

(3) Section 28 gives the right of open access that is so critical to developing competition; and the right appears to be duly conditioned on the availability of transmission capability. What is missing, however, is the necessary attendant obligation of the transmission licensee to reasonably respond to requests that call for the expansion of transmission capability and to undertake the siting authorization and financial planning to do so on a reasonably timely basis.

(4) The provision on cancellation (section 30) gives an appropriate power to the Board, subject to Ministerial approval, to cancel or suspend licenses. The provision is generally necessary and comprehensive, subject to two concerns:

(a) the power of the Minister to in effect overrule or ignore a Board recommendation without standards for, and an obligation to justify doing so may raise questions as to the objectivity of the Minister in doing so, e.g. charges that the licensed entity has "got to" the Minister. This could be corrected by making the Minister's action to withdraw/suspend mandatory; or to remove the Minister's role altogether from subsection 30(2).

(b) the need for perhaps some greater level of due process, e.g. a right of appeal, for the protection of what is a quite important right – to do business under the license.

(f) Regulations on Licensing

The Regulations provide detailed and useful information on the necessary content of applications for licenses (or their amendment/renew/transfer) (Section 3); the requirements for advertising such applications (Section 4); detailed procedures for dealing with objections to license applications (Section 5) and the requirement on the Board to maintain a comprehensive register of such licenses (Section 7). All these sections provide useful substance to the licensing regime and reinforce its effectiveness as a regulatory instrument.

(g) Appeals to the Minister

Two matters merit review:

(1) Section 34 of the Act provides for appeals of most significant Board decisions to the Minister; and Section 8 of the Regulations provides in some detail the process to be followed, although the actual procedures to be followed are to be determined by the Minister during the appeal.

By requiring that appeals are to be made to, and decided by, the Minister, these provisions put the Minister in a highly judicial role and will put considerable demands on the Minister's time and resources. They will also require the Minister to isolate himself from certain dialogues and functions if he is to maintain and adequate level of impartiality and independence in this role; and this may put constraints on this normal Ministerial activities.

Because any decision by the Minister emanating from this appeal process may in turn be appealed to a court of law with relevant jurisdiction by either an appellant, or by the Board itself,

(Regulations, subsection 8 11(b)), these sections in effect put the Minister right in the middle of what could become an intense judicial or quasi-judicial process and potentially at odds with the Board itself. It may not be a role the Minister would want to assume.

Because of these implications of the Minister assuming a quasi-judicial role under this regime, the consultant recommends that it be reviewed as to whether it will be the best role for the Minister and the best use of his resources; and whether some other type of appeal process, e.g. to the courts or to a specially appointed qualified tribunal, might not serve the national interest better.

(2) The meaning and intent or purpose of section 8(12), relating to evidence before the Minister, is not clear, at least to this consultant. It may be worthy of some discussion.

(h) Miscellaneous Provisions

Part V of the Electricity Act contains:

(1) Detailed provisions as to the Board's power to expropriate land necessary to a licensee carrying out its functions (subject to Cabinet approval), agreement as to compensation and due process being provided by the Board (section 33);

(2) Procedures to exercise rights of inspection by the Board of licensee premises (section 35);

(3) Rights of licensee to enter customer and other premises to carry out licensee functions, subject to appropriate constraints (section 36) and to maintain its legal rights over electric equipment (section 37); and

(4) Specification of various offences for violations of the Act or other offences relating to electricity and property e.g. unauthorized usage (section 38).

None of these provisions raise issues of concern as to best practices. However, they may provide useful samples of specific provisions in these areas for possible use by other jurisdictions.

(i) Sector Regulations

(1) Section 39 of the Act empowers the Minister to make regulations concerning a wide range of matters relating to the provision of electric service. The list appears comprehensive but should be reviewed from time to time to assure that it is complete and in conformity with current practice and technology.

(2) The development, monitoring, implementation and updating of these regulations will require significant and in many cases highly specialized resources and expertise, all of which may not reside or best belong in the Ministry. It is recommended that the Minister frequently review the list of these functions with a view to assessing how well they are being implemented

and whether they might better be carried out by, and devolved to, some more specialized agency such as the Board or technical boards.

D. Overview of Legislation

The above analysis attempts to give an overview assessment of the legislative framework for electricity and its regulation in Namibia. The overview suggests a quite comprehensive, generally very well drafted, integrated and modern legal framework that focuses on the sector. The one major principal concern is the pervasive role of the Minister in some areas and its impact on the role of the Board and the potential role of the courts.

There are two important emerging areas that the current legislation does not explicitly address:

(1) The role of rural and remote or off-grid electrification needs and whether a special "rural electrification" regime needs to be established, as in some other jurisdictions in the SADC and ECOWAS regions.

(2) The potential role of competition and fair trade law regimes as competition and private entry emerge in the industry and the relationship of these laws to the emerging regime for economic regulation of the industry under the Act.

3.1 EVALUATION OF TANZANIA ELECTRICITY LAWS: SUMMARY

The evaluation focuses on the draft Electricity Law 2004 (which is scheduled to replace the old Electricity Ordinance) and the recently enacted statute establishing a multi-sector regulator, EWURA.

The Electricity Act appears to incorporate all the principal ingredients of a modern licensing regime as the principal mechanism for authorization, control of operations, and regulation, of the electricity sector. It also creates a well-seasoned mechanism for potential restructuring and privatization of the sector; and it makes special provision for the development of a rural electrification program. Finally, it makes provision for coordination with technical regulation in areas such as way leaves, construction rights, facilities siting and technical inspection.

EWURA, which is complementary to the Electricity Act, contains detailed provisions for the establishment and operation of the regulatory Authority; and it sets forth clear standards and procedures for such operation.

One major concern with EWURA however is whether the Authority created is sufficiently independent from the other arms of government; and whether the Minister in charge of the electricity sector has powers which could lead to undue interference in the operations of the Authority to the point of compromising its independence and autonomous operation.

EWURA also contains important provisions relating to the interaction between the Authority and authorities in charge of administering Tanzania's competition and fair trade laws.

3.2 POSITION PAPER—ELECTRICITY LAWS OF TANZANIA: CONFORMITY WITH INTERNATIONAL GOOD PRACTICES

D. Introduction

The purpose of this report is to identify the areas in which Tanzania's electricity laws (including those relating to the regulation of the sector) conform to international good practices in this area (identifying specific provisions that may be good examples for other jurisdictions) and areas where they have shortcomings in achieving this goal. This report is based upon a provision-by-provision analysis of the basic laws of Tanzania in this area. The results of this analysis are reflected in a matrix that identifies areas of coverage and non-coverage, with commentary to elaborate upon specific provisions. The matrix then identifies specific provisions which provide "good practice" examples that may be helpful to other jurisdictions in the region.

The ensuing narrative report discusses the major issues arising from this analysis. It suggests where major improvements could be made in the existing (or imminent) legislation to conform the legislation to good practices as they may be applied in the SADC region and as they may serve the goal of regional harmonization. These goals, in turn, are pursued to facilitate the benefits of more efficient inter-country and regional trading arrangements and enhancement of productive investments in the sector's growth on a regional basis in order to reap the full benefits of scale economies and regional integration

E. Current Laws

The basic electricity legislation in Tanzania currently consists of two laws from entirely different eras that are not in any way harmonious:

- The basic Electricity Principal Legislation (Chapter 131 of the Laws) of 1958, as revised from time to time ("the Electricity Ordinance"); and
- The Energy and Water Utilities Regulatory Authority Act, 2001 ("EWURA")

The former, the old Electricity Ordinance (reviewed in detail by the consultant) is a highly detailed, technically excessively specific, very lengthy and now very dated, piece of legislation. It was drafted in a different era where the current concerns of marketing, industry structure and competition were not present. While this legislation is still technically "on the books", it is almost certainly scheduled for total repeal and replacement by a modern Electricity Law. A draft of that law ("the Electricity Act 2004") is currently in the final stages of review by the Government and is expected to be enacted this year.

Both this draft law and EWURA are the product of an intensive and highly professional sector reform program that has been underway for several years, primarily being implemented by the Presidential Parastatal Sector Reform Commission (PSRC). That program is now in an advanced stage. The modern regulatory law (EWURA) has now been on the books for over two years and is currently being implemented, primarily by the establishment of the "Authority", the regulatory entity to be established under EWURA.

Accordingly, the consultant believes it would not be meaningful to include in this report a detailed critique of the Electricity Ordinance (which would require a lengthy report in its own right). That would be of little or no value to (and probably an irritant to) the Government and reform agency (the PSRC) in Tanzania. The PSRC has already elected in principle to support outright repeal of the Ordinance and its replacement by the Electricity Act 2004 once it is submitted in final form to the legislature in Tanzania.

The consultant will instead analyze the combination of the Electricity Act 2004 (assuming it will be enacted in essentially similar form which is now probable) and EWURA. The Electricity Act 2004 has been drafted to be fully consistent with EWURA and complementary thereto. This report will identify their combined strengths and weaknesses.

F. Overview Analysis of Laws

1. The draft Electricity Act 2004 ("the draft Electricity Act")

The draft Electricity Act adopts one of the core mechanisms used in many modern electricity laws – the establishment of an explicit licensing regime, with clear rules and procedures for the granting, administration, amendment and revocation of licenses. Unlike statutes from former eras, where the licensing power was typically administered by ministries or government departments (as in the Electricity Ordinance), the draft Act explicitly vests this power in the Authority as it is empowered to act under EWURA; and the two Acts are designed to ensure consistency in the exercise of this function. The draft Electricity Act coordinates the enforcement of the licensing provisions under the procedures set forth in the two statutes.

The draft Electricity Act then establishes detailed licensing conditions for each of the different sector functions contemplated (generation, transmission, distribution and supply) including, where relevant, prohibitions or constraints on cross-ownership between these functions. It establishes procedures for the granting of licenses under stated criteria; procedures for the amendment and revocation of licenses; and it incorporates appropriate procedures for safeguarding licensee and consumer rights ("due process").

Section 6 establishes the basic requirement for any person engaged in any of the sector functions to be licensed under the Act. It empowers the Authority to resolve disputes over this and to impose fines and order cessation of operations to enforce this obligation.

Section 7 is a broad enabling provision establishing the standards for and capabilities of all licensees; and it establishes a general prohibition on providing service (and cross-ownership) in any other of the specified electricity functions (unless specifically exempted from this restriction by the written consent of the Authority). This consent may be granted where cross-ownership or common control is justified by the needs of efficient operation (e.g. in small isolated systems) and will not have anticompetitive or discriminatory effects (Section 14).

The draft Electricity Act then proceeds to set forth detailed legal powers, obligations and discretionary authorizations for each of the functions identified. These are specifically tailored to the nature, and to the degree and type of regulation envisaged as needed for each function.

With respect to generation, connected to the national grid, this regulation is essentially limited to providing basic information needed (through the Authority) and making generation facilities available (with due compensation) when necessary, for "the safe, reliable and economic operation of the national transmission grid", i.e. essentially system control reasons.

More detailed and pervasive provisions govern the conduct of transmission licensees for an essentially similar purpose (Section 9). Specific provisions and procedures cover exclusive and obligatory transmission and interconnection access and service, subject to strict provisions to apply approved tariffs.

Section 10 sets forth carefully circumscribed and defined functions and powers of the two new institutions that will be established to manage the markets that will emerge from the restructuring of the industry, the disaggregation of its functions and the development of competition in some parts of the industry. These institutions are the system operator, which shall manage the technical operation of the national grid and deal with technical problems of the Grid; and the market operator which shall administer the wholesale electricity market. The Act envisages that these functions may be administered in combination by a single entity or by separate entities each charged with the specific functions – a decision the Government will make in due course either at the outset or perhaps as an evolutionary process over time.

The draft Electricity Act (Section 11) contains more detailed provisions relating to the conditions governing distribution licenses, including requirements as to tariffs and direct relations with end use consumers, e.g. as to obtaining service, metering and billings, and actions for non-collections. It also specifies the terms for purchase of transmission and interconnection service by distribution licensees. Finally, it identifies the rights and obligations of distribution licensees in each of their "franchise areas," where they have the exclusive right (and obligation) to provide service, and "authorized areas," where they have a non-exclusive right to do so. This is a distinctive feature of the Tanzania laws as the movement towards deintegrated and more competitive markets is contemplated.

The draft Electricity Act (Section 12) also contains detailed procedural provisions for the revocation of licenses by the Authority subject to very specific rights of the licensee to respond to the alleged reason for revocation and to be heard ("due process" safeguards) and to safeguards as to interim operation in the event a revocation is consummated.

Section 13 contains procedures for amendments of licenses with due safeguards for publication and review by consumers and affected entities.

Section 15 provides for comprehensive reporting of operations and finances to the Authority by regulated entities and gives the Authority the important, comprehensive authority to obtain and require the provision of information; and, where necessary, to inspect premises, all subject to regulations promulgated to ensure reasonable exercise of these powers.

The draft Electricity Act has a specific part that sets forth the basic standards and procedures for the establishment of sector tariffs and their review and approval (with full "due

process") by the Authority, the only basis upon which they may be imposed. The Authority is required by regulations to establish the procedures for and standards for establishing multi-year tariff formulas. The Act sets forth a number of specific standards to govern this exercise of authority – such as consumer protection; licensee operational efficiency and performance based tariffs to encourage it; reflection of due consumer class cost differences; avoidance of "undue discrimination"; adequate returns on capital to attract investment; cost reflective price signals; and accommodation of subsidies.

These provisions relating to licensing and tariff regulation provide the principal governing standards for the operation of each part of the electricity sector (except to the extent, e.g. in generation, they are not to be regulated at all). They appear to be very much in conformity with standard international practice and are set forth with sufficient detail to guide the Authority in exercising its regulatory functions but not in so much detail as to constrain it from exercising due discretion. They do not tie the Authority to specific substantive rules that may become obsolete over time and require either frequent amendment of the law or (if that is difficult) pressure on the Authority to strain the meaning of some provisions. Instead, they impose explicit standards, guidelines and procedures as to how the Authority should exercise its discretion to achieve these goals.

Part IV of the draft Act empowers the Minister responsible for the electricity sector (as opposed to the Authority) to take appropriate measures for the reorganization, restructuring and potential privatization of the electricity industry; and it gives the Minister broad discretion as to the phasing and timing thereof. While this dichotomy of authority between the Minister and the Authority may superficially appear counterintuitive, in fact it is not. The basic decision to restructure the sector, to establish independent regulation, and perhaps to privatize parts of the sector, is essentially a governmental function. Broad political and multi-constituency support best facilitate that function. The role of the regulator (the Authority) is then to implement this new regime and regulate its new entities to the degree desired.

The "reorganization" chapter ("Part V") then empowers the Minister to utilize a mechanism that was used in the England & Wales electricity restructuring in the late 1980s – and has been widely used in some English Law jurisdictions since – the "transfer scheme" mechanism. This would transfer property rights and personnel contracts from existing sector entities (primarily TANESCO) to new entities as they emerge from a sector restructuring. It creates processes for the orderly devolution from transferor licensees to transferee licensees of property rights; operational rights, powers, and responsibilities; and personnel/employee contracts and related labor law issues. In short, it provides a comprehensive mechanism to manage all the transfers necessary for reorganization of the industry and related devolutions. The explicit protections of employee rights are elaborated in Part VI into what is, in effect, an employee bill of rights in the event of a reorganization – giving employees the basic options of at least equivalent rights in new entities or the offer of termination/pension benefits at least as favorable as current rights; and further protections in the case that a forced retrenchment is needed. The chapter also builds in the flexibility to permit the Minister to make mid-course corrections if initial transfer arrangements are not working well.

The legislation also contains explicit provisions for off grid facilities and rural electrification (to be analyzed in a separate memorandum); way leaves and construction rights; and for the creation of an office of Technical Inspector which will be analyzed below.

2. Evaluation of Notable Provisions in the Draft Electricity Act

(a) The substantial chapter on licensing (Part II sections 6-16) appears to be in conformity with a number of modern statutes designed for countries moving from old-style (usually State owned) monopoly models to modern, disaggregated and potentially competitive electricity sectors. It appears comprehensive as to the principal elements of the licensing regime which, however, is specifically tailored to serve the intended restructuring and evolution of the Tanzanian power sector. This was developed after some years of major analyses and decisional processes run by the PSRC and Government. Hence, while it may in general terms serve as a good "model" for a regulatory licensing regime, it cannot, because of what may be distinctive features in the restructuring provisions evaluated, be put forward as a complete model to be copied.

(b) The chapter on industry reorganization (Part V) appears much closer to the type of model provision sought in this study. It prescribes a well-seasoned mechanism for the reorganization process and builds in a level of flexibility (Sections 20 and 21) that may be a good model (perhaps with minor adaptation) for other jurisdictions contemplating a similar restructuring process.

(c) A particular concern in Tanzania (common probably to most jurisdictions) is the protection of the employment rights of existing power sector employees once a restructuring occurs. While the provisions of section 22 may be somewhat tailored to specific commitments made by TANESCO and the Government in Tanzania, they may provide principles that are useful guidance for other jurisdictions.

(d) In an effort to define clearly the role of the other principal form of regulation of the sector, i.e. technical regulation (as opposed to economic regulation), the draft Act (section 27) provides for the establishment of the Office of Technical Inspector with clear delineation of duties and due safeguards and protections as to its independence from sector interests and its rights of inspection. While the draft Act does not attempt the difficult task of demarcating precisely the respective roles of the economic regulator (the Authority) and the Technical Regulator, it does appear to define clearly the technical regulatory function and may be a useful starting point for other jurisdictions.

(e) Way leaves and Construction Rights; Facility Siting; and Protection of Stakeholder Rights

While some of these features are covered in excessive detail in old laws, they are not addressed at all in some modern laws relating to licensing and economic regulation (but may be addressed elsewhere, e.g. in specific siting statutes/ordinances).

Section 28 is an umbrella provision designed to ensure coordination between the regulation of these features and the laws/regulations that may cover them and the basic electricity economic and technical regulation laws; and it empowers the Minister to ensure the appropriate level of cooperation between the government agencies concerned. It may be a useful template for similar provisions in other jurisdictions if duly tailored to the specific institutions within them.

3. EWURA: The Regulatory Authority Act

This law was enacted in 2001, primarily to establish the institution of, powers and duties of, and procedures for operation of a Regulatory Authority for "energy and water utilities", i.e. it was developed and enacted before work on the draft Electricity Law (above) began; and it has a far broader remit than that draft law. As noted, work on implementing it, i.e. establishing the institution of the regulator, has been underway over the past two years.

EWURA contains detailed provisions that establish the regulatory institution to govern both the energy industries and the water industry.

Part II of EWURA provides for the establishment of the Authority as a body corporate with perpetual succession and a common seal. The Act provides for detailed duties of the Authority, including the promotion/protection of:

- Competition and economic efficiency
- Consumer interests
- Financial viability of efficient suppliers
- Availability of service to disadvantaged consumers

It empowers the Authority to manage licensing, regulate tariffs and establish service standards, to monitor regulated entity performance and to resolve disputes and complaints.

The Act contains detailed provisions for the creation of, and appointment/removal of members of, the Board of Directors of the Authority, and for the appointments of specific officials, consultants and staff; and specific provisions relating to codes of conduct, conflicts of interest and post service employment. The First Schedule provides impressive detail on the composition, tenure, meetings and attendance requirements of Board Members.

Part III details the general powers of the Board and has explicit provisions on its powers to regulate "rates and charges" (tariffs), and the standards and criteria for setting tariffs.

Section 18 of EWURA contains broad powers to obtain information with strong enforcement provisions.

Section 19 requires the Authority to hold inquiries for the regulatory decisions such as establishing licenses, tariffs or codes of conduct; and it provides detailed due processes for doing

so. It enables the Authority to create smaller Divisions for certain actions; and to delegate other actions to staff, with strict limits.

The Act has specific provisions relating to the relationship with competition authorities and legislation and to other standard-setting bodies. It also provides for consultation with consumer and industry groups. It has specific requirements for the publication of its key constituent documents in a Public Register (including summaries of key decisions) and the requirement for the Authority to develop clear standards and procedures for protecting confidential information.

Part IV of EWURA contains distinctive and detailed procedures for review of decisions and appeals, including the establishment of and procedures for specific review panels and committees and decisions by Divisions within the Authority under delegated powers; and for appeal of Authority decisions to the Fair Competition Tribunal.

Another distinctive feature of EWURA is an impressively detailed chapter relating to the establishment and operation of a Consumer Consultative Council, its appointment processes, functions and powers, meetings, funding and annual reports (Part V).

Part VI provides clear and detailed processes for the Authority to handle and investigate consumer complaints, with powers to order payments or the provision of services, and for dispute resolution. Section 36 provides for a detailed appeal process to the Fair Competition Tribunal on specified grounds.

Section 37 contains critical standards and procedures for resolving conflicts between actions under or contrary to the EWURA and the Fair Competition Act.

Part VII of EWURA contains specific provisions empowering the Authority to issue compliance orders and, with the Minister's approval, to make Rules on a wide variety of critical matters ranging from codes of conduct to tariffs, to service standards, to complaints, to open access requirements; and to generic declarations. The provision (Section 40) provides a useful checklist of the potentially broad range of regulatory powers. Some of these powers are subject to Ministerial approval; and the Minister is empowered to issue regulations consistent with EWURA and sector legislation.

Section 42 contains quite specific provisions defining and providing penalties for a number of specific offences.

Part VIII of EWURA contains critical provisions as to the funding of the Authority and the disposition of surplus funds; and provisions relating to tax exemptions, auditing budgeting and the provision of annual accounts and reports.

The Act also has standard "grandfathering" provisions relating to existing licenses, permits and contracts and to consequential amendments to sector legislation.

4. Evaluation of Notable Provisions in EWURA

As this description indicates, EWURA contains comprehensive and quite detailed legislative provisions, some of which may be good models for or may provide useful ideas or language for the laws in other SADC jurisdictions. Some of these have been specifically identified in the accompanying matrix as "good practice" examples; but that initial designation does not mean that there are not other useful analogies contained in EWURA and the draft Electricity Act.

Moreover, while EWURA contains many detailed provisions that are tailored to the specific legal and regulatory traditions of, and needs of, Tanzania, it does have some pervasive features that raise concern and invite critical comment and some distinctive provision that are worth noting by other jurisdictions.

(a) Independence of the Authority from Government

There are numerous provisions in EWURA that raise the concern that the independence of the Authority from Government is compromised and that the Minister "responsible for the electricity sector" is given for too much unrestrained authority over the sector in a way which could potentially undermine the independence of the Authority or its ability to carry out its functions in an effective and unfettered manner.

In a detailed report on the regulatory impact of EWURA on the electricity sector, one of the consultants involved in the electricity reform initiatives in Tanzania cites a number of provisions in EWURA in which authority given to the Minister undermines "the basic notion of independence". The report rejects the asserted justifications for the intensive role of the Minister – the need to give direction on national policy; to provide substantive expertise for regulation of the sector; and the direct accountability of the Minister to Parliament. The report cites a number of specific provisions that, in the opinion of its author, give the Minister authority over or invite the Minister to interfere in matters that should be within the exclusive decisional jurisdiction of the Authority.

It is not proposed to detail these concerns here. While the consultant does not agree with all the criticisms of EWURA in the report or the proposals for wholesale changes in that Act, the consultant does agree that the report raises sufficient serious concerns over the independence of the Authority to merit further review.

The consultant believes that these concerns might be met by due consultation over these issues, perhaps resulting in some discrete a language changes in EWURA that would deal with them. However, as such consultation is beyond the scope of this assignment, the consultant does not believe this analysis should be taken further at this point.

(b) Design and Process Issues

The above-mentioned report raises a number of issues and makes a number of recommendations for improvement of EWURA in areas such as institutional structure, the appointment process for regulators, decisional and appeals processes and investigative and

remedial powers. While many of these comments are specific to the distinctive features of EWURA and may have little relevance to other jurisdictions, some appear to have broader significance. They may provide useful examples or illustrations that could help other jurisdictions to develop best practices, e.g. through workshops or seminar that focus on specific areas of examples.

(c) Inconsistency with Non-Sector Legislation

The above-mentioned report also raises concerns as to the consistency of EWURA with the Fair Practices Act of 1994 and with the "Policy Statement on Competition and Industry Specific Regulation of the Utilities and Infrastructure Sector, Tanzania, December 1999".

The issue of the relationship between a country's general competition law and fair trade rule regimes on one hand, and economic regulation of specifically regulated infrastructure sectors such as electricity on the other hand, is an important and challenging one in many jurisdictions. A number of creative solutions to deal with the potentially complex interaction between these legal regimes, and the agencies that administer them, have been developed in jurisdictions around the world.

While sections 36 and 38 of EWURA already deal with two interrelationships between EWURA and the Fair Competition Act of 1994 (appeals to the Fair Competition Tribunal and inconsistencies between the two Acts), an exploration of all the potential interactions, and examples of solutions from international practice, may be helpful at a time when EWURA is under review with respect to amendment. A well-designed and timely workshop on this complex subject could provide a valuable input to that process.

(d) Next Steps on EWURA.

At last indication from Government, it is not currently contemplated that EWURA will be reviewed with a view to its consistency with policy and other laws – at least until the draft Electricity Act becomes law. At such time, a review of EWURA to conform to good international practices would be appropriate.

4.1 EVALUATION OF MOZAMBIQUE ELECTRICITY LAWS: SUMMARY

The current legal/regulatory structure contained in the complementary instruments of the Law and the Decrees provide a generally well drafted and coordinated legal/regulatory structure for the electricity sector, to be governed primarily through the comprehensive requirement that all major sector entities (including marketers and importers/exporters) obtain concessions, and where necessary, subsidiary "establishment" and "operating" licenses.

The Law makes clear the primary role of the State in the provision of service in the sector but enjoins the State to encourage private sector participation and permits concessions by the State for very long periods. However, there is currently no explicit authorization for the restructuring of the sector or its ultimate privatization.

The Law and Decrees contain comprehensive provisions for the issuance, duration, renewal, amendment, revocation and transfer of concessions, with clear indemnification standards. They also have clear, explicit provisions on the obligations of and standards for concessionaires, including service obligations and the ability of customers to shop for supply.

An important feature of the Law for encouraging future competition and efficiency are forward-looking and modern open access and transmission expansion and pricing requirements. Moreover, the Law contains progressive provisions for conforming these requirements to whatever regional transmission agreements may emerge, e.g. under SAPP; and it requires concessionaires to cooperate in coordination with national and regional (e.g. SAPP) planning initiatives.

The Act also contains detailed and explicit provisions for sanctions for a variety of criminal and civil offences and for enforcement.

The Decree contains clear detailed provisions relating to the formation, composition and functioning of CNELEC.

While comprehensive in most areas, the legal scheme has significant gaps in the areas of tariff-setting standards and consumer/stakeholder consultation processes.

Another major issue is the authority of CNELEC itself – limited to essentially an advisory role (to Government) on most regulatory policy matters and to an essentially arbitration function (for most decisional regulatory matters). Over time, these roles should evolve into the full range of quasi-legislative and quasi-judicial functions that fully empowered independent regulators typically have.

An important concomitant of this regulatory authority is the right of market participants to appeal regulatory decisions, e.g. to the courts. These rights should be enshrined as these regulatory capabilities develop.

The law defines well the relationship with the environmental laws over the siting of facilities. Similar relationships should be defined with competition laws and technical regulations and, in each case, with the agencies implementing them.

4.2 POSITION PAPER—ELECTRICITY LAWS OF MOZAMBIQUE: CONFORMITY WITH INTERNATIONAL GOOD PRACTICES

G. Introduction

The purpose of this report is to identify the areas in which Mozambique's electricity laws (including those relating to the regulation of the sector) conform to international good practices in this area (identifying specific provisions that may be good examples for other jurisdictions) and areas where they have shortcomings in achieving this goal. This report is based upon a provision-by-provision analysis of the basic laws of Mozambique in this area. The results of this analysis are reflected in a matrix that identifies areas of coverage and non-coverage, with commentary to elaborate upon specific provisions. The matrix then identifies specific provisions which provide "good practice" examples that may be helpful to other jurisdictions in the region.

The ensuing narrative report discusses the major issues arising from this analysis. It suggests where major improvements could be made in the existing (or imminent) legislation to conform the legislation to good practices as they may be applied in the SADC region and as they may serve the goal of regional harmonization. These goals, in turn, are pursued to facilitate the benefits of more efficient inter-country and regional trading arrangements and enhancement of productive investments in the sector's growth on a regional basis in order to reap the full benefits of scale economies and regional integration

While this matrix follows essentially the same methodology and format as do those of the other SADC countries analyzed, it is important to recognize that the legal and regulatory structure are based upon the Portuguese civil law legal system. This system has somewhat different legal concepts and structures, and differences in terminology and legal meaning from the Common Law systems analyzed in this project. These differences are somewhat compounded by translation challenges (from Portuguese into English) that sometimes lead to differences in English terminology. Nevertheless, an attempt to reconcile these differences and an attempt to create comparisons of approximately equivalent provisions is made in this report, e.g. as between the licensing and concession models. In most cases, it is believed reasonable comparisons of provisions is possible and useful, though requiring more flexibility and creativity

H. Current Laws

The basic electricity legislation in Mozambique currently consists of three major legal instruments:

- The basic Electricity Law, No. 21/97, enacted on 1 October 1997, to become effective on 7 November, 1997 (hereinafter "the Law");
- The organic statute of the National Electricity Council (CNELEC), created by Decree No. 25/2000 pursuant to Article 42 of the Law and to Article 153 of the Constitution of the Republic of Mozambique (hereinafter "the Decree"); and

- Decree No. 8/2000, which creates detailed regulations to govern concession regimes the basic electricity functions (hereinafter "the Concession Decree").

While CNELEC is specifically created and its functions and powers/capabilities ("competencies") set forth in general terms in the Law (Chapter II), these are considerably elaborated in the Decree, which adds important detailed provisions as to the composition, constitution, organization, procedures and finances of CNELEC. Hence, it is believed the two instruments, which are inextricably linked, should be analyzed together as a single legal framework.

The delegation of much of the detail to the Decree is sensible in so far as the Decree is probably easier to amend in order to make "fine-tuning" adjustments to the legal structure.

I. Overview Analysis of the Law and the Decree

1. Concessions, Licenses to do Business: General Requirements

The primary instrument for conferring the legal powers to do business in Mozambique is the "concession". It essentially embodies the same elements in terms of authorization, powers and duties, and constraints, as the typical license. The Law and the Decree cover most of these areas comprehensively to the extent they are relevant to the current state of the industry in Mozambique, where significant competition and privatization do not appear to be currently in wide use.

However, it should be noted that the term "license" is also used in a couple of discrete places in the law as a clearly subsidiary instrument to authorize the construction and operation of specific electric "installations" or facilities, i.e. specific facilities are required to have both an "establishment" and an "operating" license to function. Hence, the term "license" covers a subsidiary legal instrument with a much narrower regulatory scope than does the "concession". Hereinafter, the term "concession" will be used in this report, except where a subsidiary "license" is involved.

The general requirement to hold a concession is clearly stated. The Law contains good coverage of the purpose of the concession regime; and it contains certain of the most basic definitions. However, the list of definitions should be frequently reviewed with a view to expansion as new concepts with distinctive meanings are introduced, e.g. if the sector is deintegrated.

The Concession Decree clearly delineates the different categories of concession ("Production", "Transport", "Distribution" and "Commercialization") with specified duration time frames for each. These concessions are granted with the potential to apply for renewal subject to specific criteria (in Section 31). The Decree also sets forth specific detailed factual requirements for processing proposals – with special additional requirements for hydro facilities and for transmission concessions. It also provides general protections for landholder rights.

Article 4 of the Law explicitly sets forth the primary or "determinant" role of the State, and of State agencies, in both promoting the development of electricity facilities to increase consumer access. However, the State is enjoined to ensure private sector participation (PSP) in the "public service" of electricity supply through concessions, which protect both the private rights to use the resources and the "superior interests of the State". On voluntary termination, the concession reverts to the State; and any transfer of a concession requires approval of "the competent {State} authority".[4]

While the legal hierarchy set forth in Article 4 may appear to create a system dominated by the State, it is not necessarily a barrier to PSP if properly implemented. It should be recognized that while the concession model retains ultimate ownership rights in the State, it may grant very long-term concessions to private entities.

The key then is to ensure full protection of those private interest rights during the concession term. The legal status of the concessionaire is not explicitly spelt out in the Law and is apparently implicit in the concession concept. It may be helpful to make it explicit in the Law.

2. Basic Concession Requirements

Article 9 imposes the basic requirement that any of the electricity functions (including supply, import and export) – their construction, operation or management – require the prior grant of a concession, which may include any (i.e. one or more) of these functions. The power to grant typically lies with the Minister, who may, however, delegate it to local authorities, subject to public bidding requirements imposed as to most concessions issued (Concession Decree, Section 7).

The Law does not impose most of the restrictions on co-ownership or co-management of functions often found in modern statutes that contemplate deintegration of the sector, e.g. as between the generation and transmission functions, and possible competition. However, while permitting ownership of shares in other corporations, this is limited to a minority shareholder position in other electricity concessions unless otherwise permitted by the Minister "in the public interest" (Concession Decree, Section 18).

If movement in that direction is contemplated, the Law appears to give CNELEC the flexibility to develop standards and rules, e.g. as to the separation of functions. However, if movement in the direction of deintegration and competition is contemplated, it may be better reflected by legislative amendments that clearly signal and enable that movement.

The Concession Decree sets forth clearly the legal framework for the Concessionaire, which is to be treated as a "commercial association" that signs a contract (with specified provisions) with the competent authority. This framework is to be supervised by the Minister to whom the Concessionaire must provide all relevant information. This supervision function

[4] This term is used frequently and gives flexibility as to which State agency is involved. However, over time, as jurisdictional responsibilities become clear, it would be useful to investors for the law to specify which State agency has authority for each function.

should be a central feature of CNELEC authority and should devolve to CNELEC once it is fully empowered.

As with many other modern statutes, the Law is clear and explicit, with adequate detail, as to the specific obligations of concessionaires and standards for operation of concessions. These are elaborated in detail in the Concession Decree. They include, in Article 17, explicit and forward-looking provisions on the service obligation, the ability of consumers to shop for supply, and the requirement of suppliers to cooperate with other suppliers. Article 18 imposes specific requirements on the quality and continuity of service.

The Law sets forth clear requirements for the issuance, duration, renewal, amendment and transfer of concessions, to be detailed in regulations; and the Concession Decree establishes some procedures in these areas. The Law also requires detailed processes and standards for suspension and revocation of concessions, with clear indemnification standards. More detailed guidelines, e.g. as to processes for application, transfer, etc., will have to be developed through regulations.

3. Transmission Concession and Open Access Provisions

Article 20 of the Law contains modern and forward-looking provisions requiring non-discriminatory open access over transmission concessionaire facilities and the obligation to expand facilities, with clear standards for cost based pricing of transmission service. This provides an excellent basis for the development of competitive electricity markets; and it is enhanced by the requirement to subject these provisions to the requirements of any regional transmission agreements.

However, as noted, the Law currently contains no specific provisions that contemplate or set forth the requirements/procedures for industry restructuring and privatization, except (as noted) simple provisions that PSP is permitted (apparently in all sectors, including transmission), but subject to ultimate supremacy of the State. Should Mozambique move in this direction, a specific chapter in this area is recommended.

Chapter III of the Concession Decree creates a distinct and specific legal and regulatory regime for the National Electricity Transport Network ("NTN"), essentially the high voltage network and related (e.g. telecommunication) facilities. It prescribes the NTN's powers, facilities, property, capital restrictions, consumer connection requirements and, most notably, defines the regime for network access and transmission service pricing. It exempts the NTN from the general obligations of concessionaires set forth in Section 25.

4. The Regulatory Scheme

Part II of the Law, as elaborated in some detail in the Decrees, sets forth the basic scheme for regulation of the sector by CNELEC. It clearly defines the powers and authorities of both the Council of Ministers (in Article 6) and CNELEC in general but open terms in the Law (and in detailed terms in the Decree); and the policy objectives of the regulatory scheme are specified clearly (in Article 5).

Chapter II of the Decree details clearly the process for selection and appointment (and removal) of CNELEC members and the terms of office; the composition of CNELEC, its organizational structure and its operations, especially as to meetings and decision-making. The chapter also gives broad and clear authority to CNELEC to obtain information from concession-holders and managers of the transmission network; and it imposes disclosure and transparency standards on CNELEC itself. CNELEC is also given general authority to conduct inquiries and public consultations; to inspect concession facilities and equipment for monitoring and auditing purposes; and to develop with Ministerial approval its own internal regulations for implementation.

5. Concessions

Chapter IV of the Law sets forth in adequate detail and with clarity the basic obligations of the concessionaire, including operation in a reasonable and prudent fashion; proper maintenance; inspections; and a variety of obligations relating to external impacts such as expropriations, works, data provision to Government, and compliance with other laws/regulations.

Articles 17 and 18 impose the basic obligations on concessionaires to provide universal service to all consumers able to guarantee payment; obligations as to continuity and quality of supply; and the conditions for termination of supply. The Concession Decree elaborates these obligations further in Section 25.

It also provides for access of the concessionaire to private property in order to maintain electricity-related facilities.

Articles 23 and 24 provide detailed procedures and standards for termination of concessions and for indemnification upon termination. These requirements and procedures are elaborated upon in the Concession Decree (Section 34-39) which sets forth in some detail the conditions for termination, revocation (by the competent authority) or recission (by the concessionaire).

Article 26 contains detailed provisions on the general liability of concessionaires for the management and operation of their concessions.

Articles 25 and 27 contain two provisions that are distinctive but basic as to concession regimes;

- On termination, all facilities created from public funds (i.e. not from the concessionaire's private funds) shall revert, without charges or encumbrances, to the State;

- Payment of an annual concession fee (based, appropriately, on gross revenues from electricity sales) to the State (to be set by the Council of Ministers).

The Act also contains clear provisions on rights of concessionaires to access land for works and (if necessary and subject to appropriate safeguards to protect owners' rights and avoid misuse) to expropriate land (Article 29 and 30).

Chapter VII contains general provisions as to compliance with safety rules, environmental protection and safeguarding historical and cultural sites.

6. Sanctions

Chapter X of the Act contains detailed criminal law provisions to proscribe theft and other crimes against utility property, including aiding and abetting. Article 37 appears to create a presumption of guilt for charges made. Other crimes are detailed in Articles 38 and 39, including non-removal of plants/buildings that threaten electric facilities, operating without concessions or licenses; impeding inspections; and special procedures that may be invoked in fraud cases (Article 40). Article 41 specifies specific penalties for the various offences, including, in some cases, fines as multiples of the value of items stolen or destroyed; and doubling of penalties for repeat offences. While not necessarily to be viewed as a model or "good practice", these criminal provisions are worthy of review as to their detail on the types of offence that may occur in the industry and how they might be dealt with.

Article 44 contains provisions to recognize or "grandfather" concession rights existing prior to enactment of the Law and to adjust these to the new regulatory regime. However, there are strict time frames (typically one year) for this conversion to occur. Furthermore, entities that had operated without a concession or license are required to apply for the appropriate concession, establishment license or operating license, as the case may be. One important preference right is given to private system operators in rural areas – to apply for a concession for public service.

Evaluation of the Statutory Scheme

While containing detailed and quite comprehensive provisions in the Law (in some cases complemented or supplemented in the Decree) as to most areas of licensing of concessionaires or licensees, the statutory scheme has just two significant gaps in the following areas:

- Standards,[5] formulae and procedures for, and review processes for tariff-setting; and
- Consultation processes with consumers and other stakeholders.

Once empowered, CNELEC can readily develop effective provisions in both areas.

[5] The Concession Decree, however, sets forth some basic standards for transmission service pricing.

A major issue for ongoing review should be the powers and functions of CNELEC as the regulator. As currently constituted, CNELEC appears to have two main function areas:

(a) "Competencies" or authority to advise, issue advisory opinions on, monitor, or make proposals (usually to Government) as to a number of areas of activity. These areas include sector policies, supply or grid regulations, monitoring the granting and execution of concessions, applications for new facilities and grid expansions, expansion planning, public bidding processes, and studies.

(b) Conciliation, mediation and arbitration of disputes between concessionaires or with consumers in certain specified areas (right to and delays in supply and quality of services; tariff terms; installation and adequacy of equipment and metering; transmission access and expansion; and other requests for arbitration).

While the arbitration functions specified in (b) do put CNELEC in a decisional role as to certain matters that role is largely reactive to what concessionaires and market participants raise in arbitration proceedings. It is not clear that such processes will produce even the type of precedent creation that can serve as a building block for regulatory policy creation as has occurred in the more quasi-judicial regulatory processes such as those in the US and Canada (where, even in these systems, major regulatory advances tend to be made by quasi-legislative initiatives, such as FERC "rulemakings" in the USA, rather than accumulations of case-specific precedents).

On the other hand, the advisory functions described in (a) do cover broad quasi-legislative areas of regulatory activity, though it is not always clear where the final decision-making authority resides (presumably somewhere in Government).

Recognizing that CNELEC is a relatively new institution that is building up its capabilities, the present structure may be viewed as an appropriate first step towards the development of a fully empowered independent regulatory entity. Over time, however, the focus should be upon developing CNELEC's capabilities, and then empowering it, to take proactive policy implementation actions across the full range of its regulatory responsibilities. Over time, Government should convert several of CNELEC's advisory functions into decisional functions (and step back itself). It should broaden the scope of CNELEC's regulatory powers to include a full menu of regulatory decisional mechanisms ranging from quasi-legislative "rulemaking" activities, to quasi-judicial regulatory decisions to arbitrations/conciliations. This should be easily achieved without the need to significantly amend the Law or the Decree, which, in most cases, refer to exercise of functions by "the competent authority"; i.e. the Law, and Decrees appear to build in a level of flexibility to permit this evolution.

An important adjunct of this movement in CNELEC's scope of authority should be to clarify and adequately distinguish the policy formulation and other roles of Government from the regulatory functions of CNELEC; and to create an adequate level of "independence" for CNELEC in implementing its regulatory functions.

Another concern with the current structure that will become important if and when the sector reintegrates and introduces multiple, perhaps competing entities, is the lack of "due process" – the right, e.g. to appeal CNELEC (or currently Government) decisions that affect stakeholder rights, e.g. to the courts or to other institutions of Government.

Moreover, as multiple entity activity and competition emerges, the law will have to define the relationship between the CNELEC administration/regulatory regime for the sector and Mozambique's general laws and institutions in other major interacting areas such as competition/antitrust laws, technical and environmental regulations, etc. This is already achieved as to the environmental laws in siting electric facilities (Article 31).

Finally, and understandably, the current legal regime does not provide for a specific process for industry restructuring and reorganization (such as that designed, for example, for Tanzania) – other than the limited recognition that PSP is permitted subject to the supremacy of the State. As and when Mozambique moves in this direction, a separate section of the Law and Decree, or a separate law, could be tailored to authorize and implement the path chosen, and the mechanisms to be used, for sector restructuring and, to the degree approved, privatization.

Conclusion

Mozambique has taken major steps towards modernization of the legal and regulatory regime by the enactment/promulgation of the 1997 Law and 2000 Decree creating the organic statute for CNELEC and governing concessions for specific electricity functions. It is understood that further decrees to amend this structure may be under consideration.

As the new institutional and regulatory structure to implement these provisions is put in place, and as sector restructuring is contemplated, it is recommended that this regime and legal structure be subjected to ongoing review and adjustment to ensure the evolution to a workable modern structure. This structure should accommodate a working relationship between Government, an independent regulator and a possibly deintegrating, multi-player and more competitive electricity sector; and it should facilitate the sector's full participation in regional trading arrangements such as SAPP.

5.1 EVALUATION OF SOUTH AFRICA ELECTRICITY LAWS –SUMMARY

South Africa is apparently emerging from a process of reviewing and intensely debating the restructuring and regulation of its complex electricity sector. This exercise has been complicated by a basic fractionation of the sector between ESKOM, its parastatal giant, and numerous municipal and some former "homeland" entities of greatly varying size and composition.

This combination of influences has led to a quite complex and multi-faceted reform process that has spanned almost a decade, has seen some major changes in direction, but has yielded relatively little in the way of concrete legislative changes. Major bills are currently pending before Parliament that would (1) create a new multi-sector regulator (displacing longstanding proposed legislation to permanently authorize the NER as a single-sector regulation) and (2) that would fundamentally restructure the EDI (implementing a policy decision essentially reached six years ago). However, given the record of action on reform proposals and given that major policy issues on each piece of legislation have yet to be resolved, neither the imminent passage of these bills, nor their content, is certain. Moreover, the issue of ESI restructuring has yet to be addressed fully.

The existing legislative structure, primarily in the Electricity Act, 1987 as amended in 1994 and 1995 to authorize the NER, does enable the NER to function in its current sphere and sets out broad guidelines for its operation. However, certain major amendments will be necessary to conform this legislation to current conditions and to fully authorize the major changes currently contemplated in policy statements and in bills before Parliament:

- The **full authorization of the NER** as an independent regulatory body with adequate powers, duties and guiding principles and standards.
- The **composition and structure of the NER** itself, e.g. to address whether the structure proposed in the new Energy Regulator Bill will provide adequate regulatory diversity in decision-making as to each sector to be regulated.
- Expansion and elaboration of the **licensing provisions** to give the NER adequate substantive and procedural direction.
- Development of fuller and more focused standards and **guidance for tariff setting** by the NER.
- New substantive and procedural provisions to authorize, enable, manage and facilitate the **restructuring of the sector** (including both the ESI and EDI) and its possible corporatization and privatization (if policy decisions in those directions are made).
- Clear legislative direction defining the **precise relationships** and interactions between the centralized G & T sub sectors and the fractionated Distribution sub sector.

- Explicit provisions to set the standards for and, where appropriate, to regulate RSA's **international relationships;** and to facilitate the sector's efficient participation in bilateral and regional electricity initiatives such as SAPP and RERA.

These improvements would facilitate whatever final decisions are taken to restructure the sector, or sub sectors within it; and they would facilitate RSA's great potential to participate more fully in beneficial regional trading and regulatory arrangements.

5.2 POSITION PAPER—ELECTRICITY AND REGULATORY LAWS OF THE REPUBLIC OF SOUTH AFRICA (RSA): CONFORMITY WITH GOOD INTERNATIONAL PRACTICES

A. Introduction

The purpose of this report is to identify the areas in which South Africa's electricity laws (including those relating to the regulation of the sector) conform to international good practices in this area (identifying specific provisions that may be good examples for other jurisdictions) and areas where they have shortcomings in achieving this goal. This report is based upon a provision-by-provision analysis of the basic laws of South Africa in this area.

The ensuing narrative report discusses the major issues arising from this analysis. It suggests where major improvements could be made in the existing legislation to conform it to good practices as they may be applied in the SADC region and as they may serve the goal of regional harmonization. These goals, in turn, are pursued to facilitate the benefits of more efficient inter-country and regional trading arrangements and the enhancement of productive investments in the sector's growth on a regional basis in order to reap the full benefits of scale economies and regional integration.

This analysis has revealed that the RSA experience in reform of the electricity sector and its regulation over the past decade has been particularly difficult and complex, with numerous intense governmental and stakeholder reform initiatives and major policy overlays. These initiatives have yielded relatively little to date in the way of ultimate decisions that have led to the actual passage of legislation or related regulations, in part because basic policy shifts occasioned by the major changes in the political order have been underway in this period. These challenges have also detracted from needed attention to the creation of effective regional trading and regulatory arrangements (see Part G, below).

Because of this ambivalence in results, because so many versions of legislative reform efforts have not led to firm decisional results, it is not feasible or advisable to analyze these RSA legislative initiatives in the detailed matrix analysis format applied to the other jurisdictions analyzed under this project.

Instead, the consultant, with due consultation, has concluded that an expanded verbal/descriptive analysis of the RSA legislation, and the complex history of as yet unfulfilled initiatives to reform it, would be preferable. In RSA's case, the matrix would give a distorted picture of the current situation (unless certain unsupportable assumptions are made as to the status and content of current drafts of legislation tabled or to be tabled before Parliament).

It may be that, even as early as 2005, the picture will be very different – with a new comprehensive legal regime for the sector; but there is also a major possibility that the legislative uncertainty that has plagued the sector for nearly a decade will persist. Should the former in fact occur, and the present approach in this analysis emerge only as dictated by the timing of this project, it may be that provision could be made for revision of the analysis along the lines of that conducted for the other seven jurisdictions.

Hence, the current approach will be to provide an expanded descriptive analysis, not only of the current (deficient) legislative framework, but also a narrative description of the numerous efforts that have been made to reform the sector and its regulation. This includes the significant efforts to establish a new independent regulatory capability. It will also provide an overview of the apparent direction of current legislative reform initiatives. As noted, this is not in the format of a detailed provision-by-provision analysis because of the uncertainty both as to its status and as to the precise content of major areas of the draft legislation, such as the basic governance structure for the sector and the basic institutional status of the regulator, e.g. whether regulatory commissioners will be full-time or part-time.

B. Current Laws

The basic law still in force for the electricity in RSA is the Electricity Act, 1987, enacted to comprehensively update the then-existing legislative structure. However, this legislation was enacted in an era when it was assumed that the existing structure of the industry would persist. This structure was (and still is) dominated by ESKOM, then as a national, parastatal generation/transmission (G & T) monopoly, with the distribution sector disaggregated between a variety of local or apartheid state governments. The 1987 Act was not enacted contemplating the basic restructuring of either the Electricity Supply (G & T) Industry ("the ESI") or of the Electricity Distribution Industry ("the EDI"). Both have been the focus of a reform debate in RSA for close to a decade.

Relatively modest amendments were made to the Electricity Act in 1989, principally to permit operation of generation units without a license in certain circumstances (Electricity Amendment Act 58 of 1989).

More substantial amendments were made in 1994 and 1995 to enable the development of the first essentially independent electricity regulator in RSA (and, soon to be followed by the formation of the ERB in Zambia), the first in the SADC region. [6] While not authorized by broad empowering legislation (despite repeated attempts to enact such legislation – see below), these amendments basically laid the legal groundwork for the creation of the National Electricity Regulator (NER) to regulate the entire industry and to take over from the Electricity Control Board (ECB), which had exercised regulatory functions over ESKOM. While the legislation suggests continuity of the ECB with only a name change, in fact the authorization of the NER was a major first step towards creating the all-important institution of the independent regulator.[7]

The 95 Act makes significant amendments to the 1987 Act, including the recognition of the NER as a distinct juristic person and adding some basic provisions for the appointment of the

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[6] Electricity Amendment Act 46 of 1994 ("94 Act"); Electricity Amendment Act 60 of 1995 ("95 Act"). Other amendments related to abolitions of the old National Electricity Council; certain restrictions as to the courts; and to the Rurally Based Land Measures Act of 1991.

[7] Despite several efforts dating from the mid-1990s, the NER has never been fully authorized by comprehensive legislation. Nevertheless, it has evolved considerably to a sizeable and relatively well staffed entity. However, the lack of a comprehensive authorizing statute has limited its full effectiveness in major areas such as jurisdiction over international transactions involving regulated entities such as ESKOM.

chief executive officer (CEO) and employees of the NER, for its funding and for its financial accounting and reporting.

While the creation of the NER was a first – important but incremental - step in the evolution of the sector, with numerous intensive debates and initiatives focused on its reformation and modernization, virtually no formal progress has been made, at least in terms of enacted legislation, since that date. However, current efforts to introduce major new legislation may soon yield results. (See below – Summary (9) and (10)).

This Position Paper will now briefly describe these reform efforts and their basic intent

(2) The Pooks Hill dialogue quickly led to the initial drafting of a comprehensive electricity regulation bill, again with international input, essentially a full charter for the operation of the NER. Some major changes were recommended, e.g. as to the status and qualifications of the regulatory commissioners and their relationship to Government, to the sector and to stakeholders; and as to the scope of regulation – to comprehensively embrace regulation of all sectors. However, this draft legislation was not enacted and essentially languished for several years before further efforts to reform and expand the bill, and receive stakeholder input on it, were made. These culminated in the publication by DME of a comprehensive "Electricity Regulation Bill" ("ESI Regulation Bill") in September 2002.

(3) During this same period, Government was engaged in the process of re-evaluating its overall energy policy in a much wider range of industries including (as well as electricity), nuclear energy, oil and gas exploration and production, liquid fuel, gas pipelines and distribution, coal, and renewable resources.[9]

As to electricity, the Government presented its "vision", most notably:

(a) The restructuring, through "transitional processes", of the distribution industry into a relatively small number of independent "regional electricity distributors" ("RED"s);[10] and

(b) The restructuring of ESKOM into separate generation and transmission companies.[11]

(4) These restructuring proposals led to some major analytical and policy development work, spanning several years, undertaken under the aegis of different Government agencies.[12] Notably, the notion of privatization of existing ESKOM or municipal assets has generally been resisted, and is viewed as a long-term possibility at best. While Government has explored the notion of privatizing ESKOM's generation business to foster competition, this does not appear to be a current policy. The notion of permitting private ownership of new, independent generation entities ("IPPs") appears to have more traction with Government but is questioned by ESKOM.

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[9] White Paper on the Energy Policy of the RSA, DME, December 1998. ("White Paper").

[10] White Paper at Part 3.1. Debates centered on the number of REDs (between 5 and 9) and their relationship to provincial and local political jurisdictions, and most recently whether membership of REDs by municipal utilities will be mandatory or optional.

[11] Id. ESKOM was converted into a company by the Eskom Corporatisation Act 13 of 2001, a step that will facilitate this process.

[12] These included a major Policy Framework for An Accelerated Agenda Towards the Restructuring of State Owned Enterprises issued by the Ministry of Public Enterprises in August 2000; and a major multi-consulting project, led by Price Waterhouse Coopers, the "Electricity Distribution Industry Restructuring Project" for DME; and an independent study of legal options for the reorganization of the EDI for DME, titled "reform of the Distribution Sector in South Africa – a Way Forward" by Wolf; Lock, Stewart-Smith and Bird; and, most recently, an extensive exercise, managed by SAD-ELEC Econ to develop the operating structure and rules for a partly competitive market.

(5) The complex and politically sensitive effort to restructure the EDI was further complicated by a major legislative reform initiative led by the Ministry of Local Government that led to the Municipal Systems Bill, 2000.[13]

(6) Another major policy initiative, with enormous economic and social consequences for the sector, was the accelerated electrification program, initiated in the mid-1990s to reverse one of the worst negative economic legacies of apartheid. When the ANC Government had taken power, the electrification rate in most Black communities was dismally low for a country as developed as RSA.[14] The latest figures are that it has increased go cover over 70% of the Black population, major progress in a relatively short timeframe. While this has obvious economic and social benefits, it has also created new challenges in the economic management of the sector.

(7) In April 2003, the longstanding initiative to reform the EDI led to the introduction by DME of a comprehensive bill (approved by Cabinet), the Electricity Distribution Industry Restructuring Bill, essentially to implement the recommendations of the policy exercises to restructure the EDI. The basic mechanism proposed is to consolidate the assets of the EDI through a holding company and then to transition to a structure where six REDs would operate the sub sector, owned by the contributing municipalities and ESKOM.

(8) In a major policy change from the previous model of an electricity-specific and largely part time regulatory Commission, stakeholder-oriented in composition, the Cabinet in April 2002 decided, for reasons of efficiency, to encompass the regulation of three different energy areas within a single agency. The Government through DME introduced new (and very basic) legislation in February 2004 to establish a single regulator to regulate the electricity, piped-gas and petroleum pipeline industries.[15] The Regulator is to comprise three full-time members (each one primarily responsible for each of these three sectors) and five part-time members. While no specific qualifications are required for individual appointments, the Minister is to appoint persons with adequate legal, technical, business, economic and other professional experience relevant to these sectors.[16] It is apparent that this bill replaces the longstanding initiative to enact the Electricity Regulation Bill. However, it is anticipated that the Energy Regulator will utilize, and build upon, the existing NER infrastructure and, ultimately, add a fourth sphere of regulation to its portfolio – that of the petroleum products industry.[17]

Hence, two major bills (discussed in (9) and (10) above) that would fundamentally alter the structure of the EDI, and make major changes in the structure, role and functioning of the

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[13] One major concern of many municipalities is that the Government policy to restructure the sub sector into economically viable REDs would deprive them of the ability to cross-subsidize other municipal functions from profits made on their electricity operations.

[14] When the electrification program got seriously under way in 1992, the electrification rate in most Black townships was below 20%. At the end of 2003, this national average had risen to about 70% (higher in the urban areas, around 50% in rural areas).

[15] The Energy Regulator Bill, which has recently been assented to by Parliament and is awaiting the President's approval. The long-contemplated Electricity Regulation Bill, after several prior considerations by Parliament, has been withdrawn.

[16] Id., Sections 5 and 6.

[17] Official Memorandum on the Objects of the Energy Regulator Bill, 2004.

NER, are currently in the legislative process. Their status, i.e. whether they will be enacted in essentially similar form, and when, was not clear at the time of writing.

D. Analysis of Current Legislation

As noted, the core of the current legislation is still contained in Electricity Act 41 of 1987,[18] as occasionally amended but only really significantly by the 1994 and 1995 amendments enabling the creation of the NER. In fact, the amended 1987 Act ("the Act") now recognizes the NER as the continuation of the Electricity Control Board (ECB), i.e. theoretically a name change only (Section 2). However, as noted, the NER in fact operates quite differently from the old ECB and is well on the way to becoming a fully-fledged professional, independent regulator.

1. Functions

The NER is given broad authority (in Section 4 – Functions) to issue licenses, set prices

Section 5B contains a clear procedure for establishing license fees, to be based on a business plan to be submitted to the Minister and to the Minister of Finance.

Section 5C contains clear provisions relating to accounting, including proper record keeping, annual preparation of financial statements and auditing procedures. Section 5D requires comprehensive annual reporting of the affairs of the NER (financial and otherwise) to the Minister – to include audited financial statements, reports on the business plan and future strategies of the NER, and on licensing decisions.

4. Licensing Regime

Section 6 contains a general requirement to be licensed, with a statutory exemption for persons selling 5 GWH or less per annum and a discretionary authority of the NER (with Ministerial approval) to exempt other entities or classes.

Section 7 establishes a simple application procedure, to be elaborated in regulations, with the ability to lodge objections and the discretion (in the NER) as to publication and hearings. All licenses shall follow the regulator's format and tariff schedule requirements; may have to follow NER conditions relating to size, area, consumer classes, supply obligations and conditions; and may not be transferred without the regulator's consent (Section 8).

Section 9 contains standard tariff provisions requiring no deviation from published tariffs unless the NER approves; and authorizing the NER's ability to trigger tariff revisions.

Section 10 imposes upon licensees a general obligation to supply paying consumers, subject to supply constraints and interconnection cost contributions; and it permits appeals to the NER for undue delays or refusals to serve. Supply may not be discontinued unless justified by insolvency or non-payments.

Failures to meet licensee obligations, if not corrected after notice from the NER, may lead to either conviction of an offence and fines; appointment of an undertaker to take over the license operations for a fee until the licensee has met its obligations; or cancellation of the license and takeover by a Minister appointed undertaker (Section 12).

Section 14 provides detailed guidelines for compensation and valuation for assets taken over, voluntarily or by Ministerial action, including tariff-related adjustments, with disputes to be settled by arbitration.

Transfers of undertakings and of supply rights, and related servitudes, are permitted but require NER approval based on required information filings, and are subject to the NER's right to publish notice and institute a process to receive and review objections; and to decide upon approval under "public interest", consumers' interest or "efficient supply" standards. These constraints do not prevent licensees from subcontracting building or management responsibilities but without derogation from their ultimate powers and obligations under the Act. Asset transfers require compensation based on "reasonable value". (Section 13)

5. Regime for Local Authorities

Recognizing the distinctive powers of local authorities ("Las"), the Act exempts LAs from certain of the regulatory requirements (e.g. to get the NER's approval for transfers of pre-existing LA licenses)(Subsection 13(2)).

Generally, LA's control the sale and supply of electricity in their area of jurisdiction, except to the extent they have ceded authority to other Undertakings. Moreover, where they supply electricity under a license outside their "area of jurisdiction they shall be so under the same "conditions" as their supply within their areas. Subsection 8(3). However, the regulator may prescribe other conditions. Id.

The Minister may require LAs to provide information to the NER in "the national interest" and may issue directives to LA's, after consultation, to promote efficient electricity utilization.

Moreover, any proposal for significant expansion of LA generating capacity (more than 10% in 12 months) requires ESKOM's evaluation of the proposal and, in effect, authorizes ESKOM to make its own counter-proposal.

Section 17 gives LAs a generally exclusive right to supply, and to construct, transmission and distribution lines within their areas of jurisdiction, and requires LA consent for other suppliers to do so (to be refereed by the NER if such consent is unreasonably withheld).

6. Water and Land Rights

The Act contains longstanding provisions relating to permission to use waters of public streams (requiring applications to and proceedings before a water court); and the expropriation of land subject to Ministerial approval if based on a public hearing report by the NER that the land is required and cannot otherwise be acquired on reasonable terms (compensation to be determined by a separate statutory procedure and detailed guidelines within the Act) (Section 19).

7. Generating Plant

Section 20 imposes general obligations on all generating plant not exempted by size (above) to comply with Government regulations relating to frequency, pressure and types of current, and with NER requirements relating to coordination with other facilities. Plants for self-generation require prior review and approval by the NER as to their compliance with the Act and regulations.

8. Appeals

Section 21 sets forth a broad general right of appeals from NER decisions to the Minister who may in turn refer appeals back to the NER for reports or for "special attention", all subject to

certain due process rights. This process was recently tested by ESKOM challenging a 2004 NER tariff ruling, which was upheld by the Minister.

9. Inspections

Section 22 gives the NER or its agents the general right of reasonable inspection of premises, facilities, books, accounts and records; and the power to require the filing of accurate returns, all subjects to criminal sanctions (fines and imprisonment) for noncompliance and for improper disclosures of information so provided.

Facility operators ("Undertakers") also have a general right of reasonable entry to private premises to inspect or remove their electricity facilities and meters and a concurrent obligation to compensate for any damage so caused (Section 23). These facilities remain the property of the undertaking and do not attach to the premises under any property or insolvency law doctrine (Section 24).

10. Construction: "Breaking Streets"

Section 25 contains detailed rights and procedures for electricity undertakers to "break streets" (broadly defined), to erect posts, lay lines, etc., all subject to procedures for reasonable conduct and compensation for damage; and to coordinate closely with the property owners/operators concerned as to routing, timing, repair, clean-ups, etc.

11. Damages/Injuries

Damages or injuries caused by induction, electrolysis or otherwise through generation, transmission or leakage are presumed caused by the Undertaker's negligence, which thus assumes the burden of proof.

12. Offences and Penalties

Section 27 lays down general provisions for penalties for three broad categories of offence:

(a) Fines, to be prescribed by regulations, for offences for carrying on an Undertaking without authority or in violation of license conditions; or for failure to carry out the Minister's or the NER's directives;

(b) penalties for theft of electricity, as defined by unlawful abstraction or diversion; and

(c) fines or imprisonment for damage to or interference with electricity facilities.

13. Regulations

The Minister is given comprehensive authority to promulgate regulations for the sector relating to a wide range of matters, including licensing, inspections, measuring power flows,

power quality, supply modes, rights of way, supply obligations, fines and even the NER's procedures and appeals from NER decisions, with potentially strict penalties/fines and imprisonment up to five years for contraventions or failure to comply with license conditions (Section 28). Some of these regulations may devolve to or be better handled under the authority of the NER.

Section 28 (2) gives the Minister emergency powers to direct the supplies of energy in a declared state of emergency.

14. Delegation

As is normal in most regulatory regimes, the NER, with Ministerial approval, may delegate powers (and cancel delegations) to the Chairman, individual members or even staff of the NER; but this cannot limit its powers acting as an entire body.

15. Savings

Permits and permissions issued by the ECB prior to the 1958 Act are deemed to be licenses granted by the NER under the Act.

E. Evaluation of Current Legislation

While the Act, as amended in the mid-1990s, contemplates the development of the NER as a fully equipped independent regulator, this is enabled in very general terms and will need considerable legislative elaboration, as was contemplated for example in the now defunct Electricity Regulation Bill.

A number of specific features should be reviewed:

(1) The composition, status (full or part time) and credentials of the regulatory commission itself are only described in very general terms. A long-contemplated major structural change is apparently contemplated in the Energy Regulator Bill and should be implemented to turn the NER into a fully focused energy regulator with adequate expertise to cover all three sectors contemplated to be regulated.

One issue of serious concern is whether appointing only one full-time member for each of these three sectors is adequate. (See C(10) above). If, as with the present NER, the part-time members are inadequately equipped in terms of time and resources to fully deal with each of these sectors, too much decisional power may lie in single individuals without adequate diversity of opinion. There is a danger that each full-time regulator will become the de facto sole regulator for the sector he or she is assigned to – which accentuates the risk of "regulatory capture". Appointment of two full-time members for each area, or at least assuring adequate capabilities for at least one part time member in each area, would be advisable. Moreover, the exact relationship of the CEO to the members should be carefully defined to ensure the proper balance of authority.

(2) The funding, financial and accounting provisions for the NER, added in the 1995 amendment, appear to be clear and generally adequate. However, the source of funding for the NER will, as noted above, have to be reviewed, especially as to the current excessively broad donations clause.

(3) The provisions relating to the objects and functions of the NER, while quite general, appear adequate for the present but should be reviewed in due course and probably expanded to encompass all its activities more specifically.

(4) The Act contains relatively modern though quite general licensing provisions, most of them introduced in the 1994 amendments. The NER is given broad and appropriate powers to determine license conditions. The supply obligations of licensees and the tariff standards are also set forth in general but clear terms. All these areas will be in need of considerable elaboration, probably best achieved by implementing regulations promulgated by Government or by the NER itself.

(5) The Act contains strong but clear penalties for violations.

(6) Detailed, clear and adequate provisions cover the transfer of a licensee's supply rights.

(7) While adequate and reasonably comprehensive, it is not clear that the current licensing regime will sufficiently enable the development of a disaggregated industry with potential competition in parts of it. This will require, inter alia, clear rules relating to licensee functional and geographic scope and restrictions. Similarly, if industry restructuring is contemplated, clear enabling provisions will be needed. This is a major and understandable deficiency in the current legislation, given its vintage.

(8) Greater legislative guidance may also be needed in the tariff area, especially if the model of statutory formula tariffs (e.g. RPI-x) is adopted.

(9) The Act, as noted, contains a number of provisions attempting to define the relationship between the municipal systems and the principal electricity and other energy sectors. While mostly introduced in the 1994 amendments, these provisions will have to be subject to ongoing review as the restructuring and ongoing reform of the municipal systems sub sector proceeds. Given the uncertainty of those changes, efforts to amend these provisions at this point would be premature However, given the enormity of the structural change contemplated in both the ESKOM and municipal sub sectors and the enormous complexity of their contemplated interaction, work on rationalization of these systems should be commenced.

(10) The 1994 amendments also introduced clear and apparently adequate powers for the NER, and electricity licensees themselves, to enter and inspect premises.

(11) The Act also retains major sections relating to the use of "public stream" waters and expropriation of land. These are tailored to distinctive concerns and legal instruments and do not merit comment as to their best practices or harmonization potential. The Act also retains traditional sections relating to breaking of streets, etc.

(12) The Act contains broad and helpful powers of the Minister to make regulations in a wide range of areas – though the devolution of some of these powers to the NER, or at least to require formal input on them from the NER, may be appropriate as the NER and the new regulatory scheme develops.

F. Conclusion

Given the current uncertain status of potentially major legislation that will fundamentally alter the whole structure of both the EDI and ESI in RSA, it is difficult to definitively critique the existing legislation, much of which is probably interim or transitional in nature. It is clear, however, that the Government has long recognized the need for fundamental change and for appropriate legal and regulatory reform once that is achieved.

G. Regional Harmonization

One area in which the current framework is clearly deficient, however, is in recognizing the need for the legislative and regulatory regime to accommodate, and encourage, regional developments such as SAPP and RERA and to encourage harmonizing elements that will strengthen these initiatives. This is perhaps understandable in light of the intense and ongoing efforts to consider reforms and the major shifts within them; and the fact that so few legislative changes have been achieved since 1987 (well before the development of SAPP and RERA). However, the original conception of RERA as a body with significant regulatory authority at the regional level was seriously weakened, at the behest of some of the region's utilities, in the final arrangements for RERA's constitution agreed on by the region's Energy Ministers.

As RSA and its systems have such a major impact on other systems in the region, and on the regional arrangements themselves, issues such as the potential for harmonization with, and emulating the best practices of other jurisdictions in the region, can no longer be ignored. Even the new draft legislative instruments, such as the Energy Regulator Bill, appear myopic in the regional context.[19] That should change. That is a concern that Parliament should consider seriously in reviewing the current legislation pending before it, i.e. how the new regime contemplated will harmonize with, and encourage, the regional arrangements that present so much promise for the SADC region. This myopia on the legislative and regulatory front is particularly inappropriate in light of the major outward-looking initiatives of RSA's principal electricity entities – ESKOM and its international arm, ESKOM Enterprises.

[19] One underlying factor that may partly explain this myopia has been the longstanding situation of excess capacity in ESKOM. This has affected the needs of RSA's dominant electricity market in the SADC region, with ESKOM typically seeking only short-term economy trades when lower cost power (than its own relatively low cost power) was available. That may change as ESKOM moves into a more capacity-constrained era that could lead to more substantial trading under SAPP.

6.1 EVALUATION OF LESOTHO ELECTRICITY LAWS –SUMMARY

The evaluation focused on the major and comprehensive reform of the basic electricity laws of Lesotho achieved by the enactment in 2002 of the Lesotho Electricity Authority Act, and a series of discrete amendments proposed in 2004 to conform the 2002 Act to recent developments and to achieve further important objectives such as greater liberalization of the sector, the facilitation of privatization, and the modernization of land use regulation.

As it is expected that these 2004 amendments will be passed into law in essentially their current form, the consultant analyzed the two instruments as incorporated into a single law. This law modernizes the sector in several key respects. These include:

- The establishment of a fully authorized and independent regulator, the Lesotho Electricity Authority (the LEA) with a comprehensive and clear constitution and a detailed delineation of the LEA's powers and duties and of the regulatory structure and procedures. This is achieved by creating comprehensive and clear regimes for the licencing of sector functions, such as transmission and distribution, and including imports/exports (in the 2004 amendments); and by specific rules for supply and land use.
- The creation of a clear charter (in Part II) for the LEA, including its composition and functioning; and its powers, functions and duties, e.g. over tariff setting.
- The granting to the LEA of broad authority over many of the areas of technical regulation of the sector such as technical standards, works and safety standards.
- Broad authority to deal with most categories of offence.
- Simple but clear provisions for the funding of the LEA.
- The creation of an authority in the LEA to refer disputes to a specialized dispute resolution process set forth in a specific arbitration schedule to the law which contains a detailed constitution for the arbitration.

The 2004 amendments also provide for the outright repeal of the old Electricity Act of 1969.

Overall, the new law provides a very good example of a new legal/regulatory regime that is tailored to achieving a modern and potentially disaggregated and competitive sector. It also provides one of the best examples in the region of a detailed charter for the operation of the regulator (the LEA); although more detailed attention could be paid to certain features of a comprehensive regulatory regime such as the selection of regulators, accounting standards, rules for the funding of the LEA and codes of conduct.

The law also provides for the development of a distinctive regime for rural electrification; and it provides standards to guide future reform processes.

In summary, the law provides an excellent example of how an apparently focused reform process with appropriate government support can produce a modern and comprehensive legal regime in a relatively short period.

6.2 POSITION PAPER—ELECTRICITY LAWS OF LESOTHO: CONFORMITY WITH INTERNATIONAL GOOD PRACTICES

J. Introduction

The purpose of this report is to identify the areas in which Lesotho electricity laws (including those relating to the regulation of the sector) conform to international good practices in this area (identifying specific provisions that may be good examples for other jurisdictions) and areas where they have shortcomings in achieving this goal. This report is based upon a provision by provision analysis of the basic laws of Lesotho in this area. The results of this analysis are reflected in a matrix that identifies areas of coverage and non-coverage, with commentary to elaborate upon specific provisions. The matrix then identifies specific provisions which provide "good practice" examples that may be helpful to other jurisdictions in the region.

The ensuing narrative report discusses the major issues arising from this analysis. It suggests where major improvements could be made in the existing (or imminent) legislation to conform the legislation to good practices as they may be applied in the SADC region and as they may serve the goal of regional harmonization. These goals, in turn, are pursued to facilitate the benefits of more efficient inter-country and regional trading arrangements and enhancement of productive investments in the sector's growth on a regional basis in order to reap the full benefits of scale economies and regional integration.

K. Current and Projected Laws and Regulation

Lesotho has made remarkable progress over the last few years in amending its legal and regulatory framework to accommodate modernization of the sector in several major respects:

- The creation of a fully authorized autonomous and independent regulatory body, the Lesotho Electricity Authority ("the LEA"). The authorizing legislation has clear and detailed provisions for the constitution, powers, duties and procedures of the LEA and the regulatory structure;
- Clear rules as to the scope of regulation over entities affected by it;
- A detailed regime for the licensing, administration and dispute resolution mechanisms for the sector;
- Specific rules for licenced functions (transmission and distribution) and imports/exports;
- A detailed arbitration code to handle disputes; and
- Specific rules and by-laws for supply and for land use.

These provisions are set forth in the Lesotho Electricity Authority Act 2002 (hereinafter "the 2002 Act"). In 2004, the Government has proposed a number of amendments to the 2002 Act ("the 2004 amendments"), to conform it to more recent developments to achieve several significant objectives, in particular:

(1) to facilitate the privatization of the sector pursuant to recent Government actions under the Privatization Act 1995;

(2) to make clearer the composition, authority and functions of the LEA vis-à-vis Government;
(3) to clarify funding of the LEA;
(4) to modernize land use (in place of "street works") regulation;
(5) to remove certain market structure restrictions in the 2002 Act and permit greater liberalization of the sector;
(6) to add the regulation of imports/exports; and
(7) certain conforming and error-correcting amendments.[20]

These amendments are, in a broad sense, an update/cleanup of the recently enacted 2002 Act; and they also reflect recent progress on the ongoing modernization/privatization initiative in Lesotho. Because they would not, if enacted in current or similar form, substantially alter the framework of the 2002 Act, and absent any evidence that they are controversial and not likely to be enacted, the Consultant has analyzed them as if enacted and incorporated into the 2002 Act. This package of legislation provides a comprehensive and updated charter for the organization, management and regulation of the sector.

As further indicative that they provide a "final touch" to the current package of amendments of the old laws, reflecting current privatization initiatives, the 2004 Amendments (if enacted) in Section 4 will repeal the old law, The Electricity Act, 1969 ("the 1969 Act") outright.[21] Because this repeal appears imminent, and necessary in the interests of clarity, the consultant will not analyze the 1969 Act in detail here.[22]

Hence, the core of the current legislative structure and charter for the sector is contained in a single comprehensive, and to be updated, piece of legislation, the 2002 Act. This legislation would, by the 2004 Amendments, be conformed to and updated to harmonize with developments in the area of privatization of the sector pursuant to the Privatization Act No. 9 of 1995.[23]

L. Overview Analysis of Laws: Lesotho Electricity Authority Act 2002, As Amended

As noted above, the 2002 Act sets forth a detailed Constitution for the LEA (Part II and Schedule 1); detailed provisions to guide the LEA as to its functions, powers and duties, including the settings of tariffs (Part III); regulatory provisions relating to technical Inspectors and the Public Register (Part III); detailed requirements and procedures for licensing (Part V);

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[20] Lesotho Electricity Authority (Amendment) Bill, 2004 ("2004 Amendment").

[21] The status of the 1969 Act was not addressed at all by the 2002 Act itself, notwithstanding that it clearly displaced many of the major functions and provisions of the 1969 Act – perhaps an oversight or perhaps because the package of reform legislation was not yet complete. The 2004 Amendments clarify that status.

[22] Briefly, that Act described in detail the powers, functions, and duties of the Lesotho Electricity Corporation and its relationship to Government (primarily the Minister); its membership, finances and accounting and procedures; detailed rules as to supply and payment; and very detailed provisions as to works, inspections and testing, and entry onto premises. It is to be replaced by a new corporation. See note 4 below.

[23] Recent implementation actions include:

- Privatization Act Notice, 2004, laying out the basic Concession Scheme to implement the restructuring strategy for LEC, Legal Notice No. 50 of 2004.
- Lesotho Electricity Company (Proprietary) Limited (Establishment and Vesting) Bill 2004, which will provide for the incorporation of the LEC and its vesting in the new company, and related employee and asset transfer issues.

important provisions relating to the activities and licence rights of the sector, to be updated by the 2004 amendments (Part IV); provisions on offences and enforcement (Part VI); and imports and exports (Part VII); provisions relating to the specific duties of transmission and distribution entities (Parts VIII and IX) and a detailed schedule setting forth an Arbitration Code to deal with dispute resolution.

Key elements of these provisions will be examined below as to their adequacy; their conformity with or utility for developing regional "practices"; and their potential for regional harmonization.

As the 2002 Act, as amended in 2004, is in effect a comprehensive statute for virtually all aspects of the regulation (both economic and technical), and for licensing and restructuring/privatization of the sector, this verbal analysis will follow, as closely as possible, the format of the matrix analysis appended hereto.

1. Licensing Regime

The 2002 Act, as amended (hereinafter "the Act") contains a comprehensive licensing regime that covers virtually all major aspects of licensing of sector entities, though not in great detail (Part V). However, as the licence will emerge as the principal regulatory tool of the regulator, the Lesotho Electricity Authority ("the LEA"), this relative brevity will not be a problem. If, as envisaged in the Act, the LEA has the authority and capability to develop its own detailed rules of procedure (Section 18) and to make its own rules and bylaws in consultation with the Minister (Section 36), these statutory provisions can be elaborated and expanded as needed.

Part V sets forth in reasonable detail the procedures for application for, and LEA consideration of and approval of, a licence. Section 54 states a simple but clear guiding principle – that the licensee has the "appropriate financial standing, technical and managerial competence" to carry out the regulated activity in question.

As in many such licensing regimes, the heart of the LEA's ability to regulate the sector through licensing is contained in its power to impose conditions in licencees (including payment of fees to the LEA – its own economic lifeblood) and to require licensees to enter into agreements to carry out the licence conditions.

Mandatory specific licence conditions are set forth in the LEA as to each of the three major licence categories – generation (Section 61), transmission and dispatch (Section 62) and distribution and supply (Section 63). These mandatory conditions contemplate a modern, potentially disaggregated and competitive sector, e.g., as to generation, submission to central dispatch and offering the provision of ancillary services; as to transmission, requiring interconnection and open access, and separate accounts; and as to distribution, requiring economic purchase, separate accounts and a distribution code, i.e. a clear categorization of functions and of the distinctions between these entities.

All these elements are typical of modern, relatively sophisticated systems that permit or require sector disaggregation/restructuring, competition and, and perhaps, privatization.

The LEA also contains sufficiently detailed provisions as to the modification of licences, with provisions for arbitration of disputes; and provisions for enforcement of licence conditions with detailed procedures as to the issuance of enforcing orders. (See Sections 66-93). A licensee may seek arbitration if dissatisfied with preliminary or final orders under these sections. (See below).

An important power is given to the Authority under the 2004 Amendments to compel separation of the distribution and supply business and to award separate supply licences, i.e. to enable the sophisticated level of disaggregation implemented in jurisdictions such as England & Wales and California. (Section 63(2)).

A further impressive element of the Lesotho licensing regime is the recognition of the critical role both transmission and distribution licencees play in the provision of reliable, safe and efficient supply. Recognizing their natural monopoly characteristics, these features require the regulator to ensure competition in generation where feasible and non-discriminatory access to and on these licensee systems. Special chapters (Part VIII, Transmission, and Part IX, Distribution) are included to give the LEA a clear charter to deal with these issues.

The LEA is also required to develop objective criteria for and to monitor compliance with the qualifications to operate licensed or exempted facilities.

2. Arbitration

Rather than relying heavily on intensive dispute resolution within the LEA itself (as, for example, plagues some otherwise sophisticated regulatory systems such as those at the federal and state levels in the USA), or relying heavily on reference to the court to resolve disputes as is common in many Commonwealth jurisdictions), the Act gives licensees broad authority to refer disputes to a specialized arbitration process, set forth in Schedule 2, the Arbitration Code. No orders of the LEA may be challenged in the courts until they have been arbitrated under this process, which may be triggered on two grounds:

(a) order not made under proper procedures,
(b) order not within the LEA's powers (i.e. ultra vires).

Schedule 2 contains essentially the constitution of the arbitration scheme, with specific provisions as to:

- the appointment of, and change of, arbitrators;
- detailed arbitration procedures
- rules for production of documents
- rules for hearings
- powers of arbitrators to amend or strike
- awards and notices

Given the often specialized and technical nature of disputes between electricity providers and stakeholders (aside from simple customer complaints), the Lesotho decision to rely primarily on arbitration for dispute resolution, rather than resort to dispute resolution by the LEA itself or by the courts, is apparently well considered and worthy of attention by other jurisdictions in the region.

3. Regulatory Regime

Part II of the LEA contains a detailed, clear and well considered charter for the independent regulator, the result of a systematic review of the institutional arrangements by the Government of Lesotho ("GOL") and the decision to separate the policy-making role (to remain with GOL) from regulation of the sector – to devolve to the LEA.

The LEA is created as an industry-specific regulator but with the option of GOL to expand it to cover other sectors. It is given full corporate powers and perpetual succession as a body corporate, i.e. it does not need to rely on the political process for ongoing reauthorization. Under the 2004 amendments, the Board will consist of not more than five members and not more than nine members, including a Chairman, all part time, except for one member who is also appointed as Chief Executive Officer (CEO) who shall be full-time for a five-year term (renewable only once) and who shall conduct the day-to-day management under the Board's direction. Board members are appointed for four years, renewable only once (after the initial terms that are different to facilitate staggered terms). Section 4. This section also sets forth a systematic majority vote appointment process with nominees from GOL, the electricity industry and consumer groups. Candidates are disqualified if they have criminal records or conflicts of interest related to licensed operators.

The LEA has standard and detailed provisions relating to resignations, suspension and removal from office of Board members (Sections 6 and 8—11); for removal with the ability to get input from a quasi-judicial tribunal; and for filling of vacancies (Sections 12 and 13).

Financial

Two important financial provisions have been elaborated by the 2004 Amendments:

- Funding of the LEA, to come from fees, etc. from licensees, Parliament or "any other source"; and

- A requirement on the LEA to submit a regular budget for Ministerial approval.

Independence of LEA

The all-important independence of the LEA is specifically and clearly stated in Section 20, distinguishing between the LEA's independence in carrying out its functions and duties and its have "due regard" to Government policy "as embodied in legislation". The 2004 Amendments also recognize the Minister's rights to issue directives to the LEA to implement

Privatization Schemes approved by Cabinet and to issue licences accordingly. Section 20(b) and (c).

Functions, Powers and Duties of LEA

Part III of the Act sets forth in clear detail the "general duties" (Section 21), "general functions" (Section 22) and "general powers" (Section 34) of the LEA; and Section 23 sets forth five clear standards for the exercise of these duties/functions/powers, including consistency, minimization of restrictions on sector entities, accommodating financing of businesses, non-discriminatory access, and reasoned decisionmaking.

The duties/functions/powers are elaborated in clear and helpful detail that merit reading.

The "duties" include promoting "sustainable and fair competition", "efficiency", "financial, viability", protecting the interests of all consumer classes; "security of supply", and participation in international matters. (Section 21).

The "general functions" are also broad-ranging and include licensing; maintaining technical, safety and customer care standards; regulating prices; approving transmission and distribution codes; and resolving disputes in a "last resort" mode. (Section 22).

The LEA's "general powers" relate primarily to its management of the Authority but also to licensing, fees, setting technical standards, investigating violations and hiring external professional consultants.

Tariffs

Another critical area of the LEA's functions relate to tariff-setting, often viewed (especially by economists) as the heart of economic regulation. Section 24 makes clear that the tariffs and rates set by the LEA govern, even to the point of overriding conflicting contractual arrangements; and it sets forth clear standards and procedures for the filing, review (including consumer input as to their "reasonableness") and implementation and publication of all LEA approved tariffs (with related accounting information and applicable conditions).

While this tariff section is couched in very general terms; it is apparent that significant progress has already been made to move the tariff structure to one that is conducive with an efficient, potentially competitive sector. In 2003, GOL approved a "Tariff Transition Plan", based on an international consultant's study, to move tariffs to a cost-reflective levels over three years, after which a basic system of price controls on the basis of the CPI-X formula will be developed. This will also take account of the actual costs of the important Muela HEP input to the power supply. As the sector reorganizes, tariffs of each licensee class will be subject to ongoing review to ensure tariffs that fully fund the sector's activities.

Public Register

The basic elements of licences and related orders and derogations are to be maintained in a public register, open to public inspection (Section 26 and 27) and, as noted, the LEA is required to make annual reports to Government (Section 28).

Other LEA Authorities

The LEA is also given broad authority in other specific areas:

- To grant "derogations" from specific licence conditions for specific licensees or classes thereof:
- To appoint technical inspectors to implement aspects of technical regulation of licensed facilities;
- To establish and monitor technical standards for "electricity equipment";
- To establish "supply rules" and by-laws relating to a broad range of technical, quality of supply and safety matters (Section 37 and 38);
- To establish regulations for "street works" and other matters relating to the construction and installation of electricity facilities; and
- To establish health and safety standards.

Regulated Activities

Part IV of the LEA, titled "regulated activities", contains several important building blocks for the restructuring of the Lesotho electricity sector. As noted, each of the specific functions of a disaggregated industry are defined as "regulated activities", only to be conducted by persons licensed by the LEA or exempted under the Act. Sections 41 and 42.

The LEA is given specific authority to issue exemptions from licensing of a regulated activity, either by application or on the Minister's own motion. (Section 48). Section 48 sets forth a clear process for exemption application, stakeholder input and LEA decisionmaking.

While a general proscription is set forth on generators selling to other than authorized licencees (e.g. distributor/suppliers) (Section 43), direct ("bypass") sales to eligible end users are contemplated after ten years from enactment unless negated by annual certifications by the LEA and Minister. Bypass may be specifically authorized by the Minister prior to that date, based on a report by the LEA that the markets in Lesotho are ready for the level of bypass sales authorized. Section 45. Certain safeguards are added to protect existing licensed operators (Sections 46 and 47).

These provisions in effect introduced an avenue for competition at the retail level, to be based on close analysis and monitoring by the LEA and Minister.

Offences

Part VI contains clear and adequately detailed provisions to deal with several types of general offences, divided into two broad categories:

(1)(a) contravening the Act in general; (b) suppressing documents or information required under the Act; and (c) carrying out activity that the LEA concludes is intended or likely to have the effect of restricting, distorting or preventing competition in a regulated activity; or, more broadly may prejudice consumers or the public interest (Section 101); and

(2) more traditional offences relating to interference with electric facilities; damaging another person's facilities; and providing or using electricity services without a licence. (Section 102).

Each offence under either subsection may lead to substantial fines (up to 10% of annual revenues) or imprisonment up to ten years.

(1)(c) in effect puts the LEA in the position of enforcing competition laws and standards in the context of the regulated sector. As the appropriate application of competition law doctrine (itself complex and specialized) to the regulated electricity sector is a very challenging area, the LEA should proceed carefully in implementing this subsection, especially once a competition regulator (currently under consideration) starts exercising jurisdiction in this area.

The LEA is given broad powers to conduct inquiries and investigations and to appoint inspectors to detect or monitor for offences. To encourage compliance, the LEA may issue enforcement orders with a 30 day time limit for compliance and penalties (of the same magnitude as above) for non-compliance. Section 103. While the enforcement powers of the LEA are specifically recognized, they do not oust the jurisdiction of the courts. Section 104.

The LEA is also to adjudicate disputes and complaints between licensed operators and with consumers, though private settlement of disputes is encouraged and to be notified promptly to the LEA. Section 105.

M. Evaluation of Laws: Potential for Regional Harmonization

As one of the governments that has most recently, and seriously and systematically, revaluated its legal regime for electricity with a view to potential restructuring, introducing competition and potential privatization, it is apparent that the GOL has produced perhaps the most advanced and progressive legal regime in the region to achieve these goals. This review has apparently benefited greatly from other experiences in the region and internationally, and from a careful internal review and quality expertise and inputs. The result is a scheme that merits close review by other jurisdictions contemplating, introducing or updating reforms. The consultant believes it may be useful to highlight key aspects or features of this legislation that the consultant believes will assist in achieving good or best practices, and in enhancing harmonization throughout the region.

1. Best Practices

(1) The general conditions to be imposed on licensees, and the specific conditions as to each of the major categories of licence, provide a good example the type of regulatory regime that is tailored to a modern and potentially disaggregated and competitive sector.

(2) The reliance on a tailored and detailed arbitration scheme as an alternative to heavy reliance on internal appeals of LEA decisions or reference to the courts merits attention as a possible good alternative to the demands of internal administrative and judicial litigation in this arena. This may be of special value in areas of dispute resolution that will require quality technical, economic and legal expertise, e.g. as to disputes that may arise between major stakeholder groups in a disaggregated, competitive sector.

(3) Part II of the LEA contains a clear charter for the independent regulator with standard provisions to cover most institutional aspects of regulation. Of special note is Section 20 that establishes the standard for independence of the regulator and its relationship to Government policy and privatization initiatives.

(4) The Act sets forth in excellent detail the duties, functions and powers of the regulator.

(5) The Act also contains a solid framework for establishing economically sound tariffs, a process that is already under way.

(6) The Act also contemplates, and provides for the evolution of the sector's structures, and potential competition, in several important respects:

(a) As noted in (1), the clear delineation of functions that are recognized in a modern disaggregated sector, including supply, system control and ancillary services.

(b) Broad powers to exempt classes or entities from some or all aspects of regulation, e.g. price regulation as competition develops in generation.

(c) a regime to progressively move the sector to retail competition, subject to close supervision by the Minister and LEA.

(d) the evolution of a distinctive regime for rural electrification (both grid and off-grid). The LEA is specifically to monitor technical standards, contractual arrangements and resolution of disputes for offgrid entities, to assist in tariff setting, and to facilitate expansion of rural electrification. Section 22(2).

(e) The enunciation of some general standards to guide the reform process, such as competition and consumer protection.

(f) While still embryonic, granting the Minister the discretion to issue Directives relating to privatization and the duty of the LEA to respect these.

2. International Trade and Harmonization

The Act contains the most explicit and comprehensive provisions the consultant has found for recognizing and advancing the international aspects of the sector, e.g. as to its participation in both the SAPP and RERA arrangements. Sections 21(1) and 21(2). These explicit commitments are a model for all other jurisdictions in the region and should be the focus of a specific workshop on these relationships and how system practices might be harmonized to enhance international trade.

3. Areas Requiring Further Attention

While, as noted, the Lesotho legal structure has made tremendous strides over the last two years, it is not completely devoid of some areas that require further attention, though not necessarily in the near future. Several relate to the information/accounting functions.

(1) The provisions relating to selection of Board members could be reviewed and tightened to assure the selection of an adequate cross-section of areas of expertise (law, engineering, economics, etc.) and industry stakeholder experience.

(2) The law is currently very general on the accounting standards for and reporting obligations of licensees. However, given the broad authorities granted to the LEA to make bylaws, rules and administrative orders, this is a matter the LEA itself could address in due course. In so doing, it should pay special attention to create a regime that adequately protects the collection and dissemination of confidential and commercially sensitive information. With the explosion of information and data that falls under the regulatory sphere as competitive and real time markets emerge, the experience of jurisdictions that have undergone such changes could be drawn on.

(3) At some point, as the reform process proceeds, detailed codes of conduct for sector participants and conflicts of interest provisions will need to be developed. There may be sufficient authority in the LEA to do so administratively.

(4) At some point, especially as Lesotho develops a regime for competition/antitrust regulation, [24] an analysis and dialogue will be necessary to assist Government in defining precisely the working relationship between the LEA and the competition authority. There is a wealth of different models for doing so to be derived from international experience. As systems develop towards real-time trading and competition, the "market monitoring" models adopted in many competitive systems should also be reviewed.

(5) As noted, the current privatization authorization provision in the Act is understandably embryonic. As Government proceeds in this direction, a more specific charter or structure should be developed, either administratively or through legislative amendment.

(6) As a business model for rural/off-grid electrification is developed to accommodate conditions in Lesotho, the statutory provisions relating to off-grid electrification,

[24] South Africa only developed this in the late 1990s; and that quickly led to a need to define the respective authorities of the NER and the competition regulator.

currently in Section 22(2) of the LEA, should be expanded or, as in other jurisdictions such as Zambia, replaced by a more specific separate statute.

(7) The LEA does not contain a specific regime for customer/consumer complaints. This is not necessarily an omission; as in many jurisdictions, a preferable solution may be the establishment of an entirely separate regime for customer complaints, i.e. to separate it from economic regulation.

(8) The excessively broad provision that funding of the LEA may come from "any [other] source" should be revised and narrowed. In a competitive, disaggregated industry, funding from stakeholders could raise serious conflicts of interest.

Conclusion

Lesotho has clearly benefited greatly from its recent intensive review and overhaul of its legislative framework for the electricity sector. The result is an integrated, coherent and up-to-date set of legal provisions contained in a single statute. Some areas that may require further attention or detail can be readily addressed in due course.

1. Zambia
2. Namibia
3. Tanzania
4. Mozambique
5. South Africa
6. Lesotho

ZAMBIA
USAID/RCSA
Benchmarking Southern African Electricity Regulatory Legislation
Electricity Sector and Regulatory Laws

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
1. Title and scope	▯		
2. Licenses to do business - general requirement	▯		▯
a. Exclusivity/restrictive provisions legal basis			
i. Territorial restrictions	▯		
ii. Functional restrictions	▯		
iii. Prohibition on non-authorized activities	▯		
b. Qualifications for license - standards, criteria,	▯		
capabilities and duties			
c. Categorization of licenses	▯		
(i) Deintegrated entities	▯		
- identification of functions	▯		
- conditions	▯		
- obligations and functions	▯		
(ii) Restrictions on cross-ownership	▯		
(iii) Trading and import/export rules	▯		
d. Issue, renewal, duration, amendment & transfer	▯	Imposes detailed conditions	▯
	▯		
e. Suspension and revocation	▯	Due process provisions added	▯
	▯		
f. Processes; application for issuance, transfer, etc.	▯	Process for objections also	▯
g. Legal status of license/licensee	▯		
h. Derogations or exemptions			
i. Size	▯		
ii. Non grid entities			
iii. Self-use only	▯		
i. Voluntary termination and transfer obligations	▯		
j. Power of regulator to impose conditions	▯		
k. Obligations of licencees:	▯		
- duty to supply/ "obligation to serve"	▯	appeals to Regulator	▯
- non-exclusive areas and service requirements	▯		
	▯		
- standards of service			
- open access/common carrier	▯		
X capability proviso			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
3. Reporting and Accounting Obligations of Licensee			
a. Accounting standards			
b. Filing of accounts	▯		
c. Reporting requirements	▯		
i. Regulatory (economic regulation)			
ii. Owner/shareholders (corporate governance)			
iii. Regulatory (securities regulation)			
4. Pricing/Tariffs			
a. Standards/criteria/principles governing tariffs	▯		
b. Required formulas and regulatory discretion	▯		
c. Characterization and allocation standards	▯		
d. Application and review processes	▯		
i. Consumer/stakeholder participation	▯		
ii. Reviews and appeals (due process)	▯		
e. Function-specific standards (e.g. transmission)	▯		
5. Industry Restructuring/Reorganization (R/R Provisions)			
a. Legislative delegation of authority	▯		
b. Process for R/R actions			
c. Standards governing reform process			
i. Protection of competition and efficiency			
ii. Consumer protection			
iii. Vested economic interests - preservation	▯		
d. Incorporation provisions	▯		
e. Privatization procedures/legal process	▯		▯
- transfer schemes	▯		
- employee/personnel rights	▯		▯
- property devolutions	▯		
- compensation and sale provisions			
- variation agreements	▯		
6. Regulatory Regime (Institutional)			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
a. Establishment of regulatory authority/commission	[]		
b. Legal status and capacity of regulator	[]		
c. Functions, powers and duties of regulator -	[]		
governing principles	[]		[]
d. Relationship with government and regulated	[]		
entities	[]		
- regulatory independence - definition			
e. Composition of Commission members	[]		
i. Qualifications/standards for appointment	[]	specific experiences	[]
ii. Process for selection and appointment of	[]		
members			
iii. Process for removal of members	[]		
iv. Terms of service: term limits	[]		
f. Power to appoint staff and consultants	[]	including inspectors	[]
g. {Description of key staff positions}	[]		
h. Codes of conduct for Regulator	[]		
i. Conflicts of interest provisions	[]		
j. Standards governing regulatory actions: constraints,			
limits and relationships			
- tariff regulation	[]		
- competition standards	[]		
- interaction with competition laws and	[]	to promote competition and access	[]
authority			
- interaction with technical regulator	[]		[]
- interaction with local authority regimes	[]		[]
- interaction with environmental agencies	[]	to minimize environmental impacts	[]
k. Rules for delegation of authority			
- to subsets of Commission	[]	appeals to Regulator	
- to staff	[]		
- to special tribunals	[]		
- to other entities	[]		
- reference to courts	[]		

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
I. Scope of regulatory authority/powers	[]		
(i) to establish tariffs and charges	[]		
(ii) to obtain information	[]		
(iii) to conduct inquiries	[]		
(iv) to resolve disputes	[]		
(v) to issue rules, regulations, orders, etc.	[]	incl. technical rules	
(vi) Role, relationship and hierarchy of	[]		
regulatory instruments			
(vii) Appoint and manage staff - delegation to Chair?	[]		
(viii) to grant and supevise licences	[]		
(ix) Supervision of provider/consumer relations			
- establishment of standards of conduct	[]		
- consumer complaints	[]		
- delegation to special tribunals	[]		
- review of consumer			
- discipline by provider			
- penalties			
- suspension of service	[]	caretaker regime	[]
- reinstatement rights	[]	due process rights	[]
m. Enforcement of rules and decisions to impose	[]		
penalties			
- identification of offences	[]		
- fines	[]		
- license suspension/revocation	[]		
n. Regulatory process			
(i) Processes for decisionmaking	[]		
- representations and due process	[]	new provisions added	[]
- regulatory accountability			
- transparency of decisional process			
- quasi legislative process			
(ii) Regulatory meetings	[]	new provisions added	[]
- frequency	[]		
- conduct rules	[]		
- sunshine and confidentiality rules	[]		
	[]		
(iii) Publication and dissemination of decisions	[]		
- reasoned decision-making			
(iv) Consultation processes			
- consumers			
- other stakeholders			
- government			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- public at large			
o. Reviews and Appeals			
- courts	▯		
- government	▯		
- specialized agencies			
- special tribunals			
p. Dispute Resolution			
- arbitration and mediation			
- regulatory policy decisions			
- complaints	▯		
q. Consistency of regulatory policy with:	▯		
(i) Sector legislation	▯		
(ii) Constitution of country	▯		
(iii) Other generic legislation, e.g. competition	▯		
e.g. competition laws			
(iv) Processes for resolving inconsistencies	▯		
between laws			
- supremacy provisions	▯		
- inter-agency conflict	▯		
- resolution mechanisms	▯		
r. Funding of regulatory functions	▯		
(i) Government funding processes -	▯		
appropriations and levies	▯		
(ii) Levies on regulated entities	▯		
(iii) Budgetary processes of regulator	▯		
(iv) Management of funds/surpluses/deficits	▯	conflict of interest provisions added	
- fines and penalties	▯		
- other sources (donations)	▯		
	▯		
(v) Regulatory accounts			
- standards for transparency	▯		
- audits and accountability: GAPP			
compliance			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- accounting standards	[]		
s. Reporting Requirements: (i. substantive;	[]		
ii. financial)			
(a) To government	[]		[]
(b) Public reporting/annual report	[]		[]
(c) Collection, Protection, Dissemination of	[]		[]
Information	[]		[]
(i) non-disclosure rules	[]		[]
(ii) penalties for disclosure	[]		[]
7. Technical and Land Use Regulation			
(a) Categories of regulation	[]		
- health and safety standards	[]		
- land use	[]		
- technical standards	[]		
reliability	[]		
safety	[]		
function-specific standards			
(b) Role in Siting Regulation			
- relation to local authorities			
- powers of expropriation; eminent domain	[]		
- certification and siting of facilities			
8. Transitional Provisions	[]		
(a) Transitional provision	[]		
(b) "Grandfathering" provisions (from old regime)	[]		
(c) Repeals	[]		
(d) Effective dates of provision	[]		
- phase-ins			

NAMIBIA
USAID/RCSA
Benchmarking Southern African Electricity Regulatory Legislation
Electricity Sector and Regulatory Laws

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
1. Title and scope			
2. Licenses to do business - general requirement	▯	function-specific; all functions	▯
a. Exclusivity/restrictive provisions legal basis			
i. Territorial restrictions			
ii. Functional restrictions			
iii. Prohibition on non-authorized activities			
b. Qualifications for license - standards, criteria,	▯		
capabilities and duties			
c. Categorization of licenses			
(i) Deintegrated entities	▯		
- identification of functions	▯		
- conditions			
- obligations and functions			
(ii) Restrictions on cross-ownership			
(iii) Trading and import/export rules	▯		
d. Issue, renewal, duration, amendment & transfer	▯	environmental impact a criterion	▯
e. Suspension and revocation	▯		
f. Processes; application for issuance, transfer, etc.	▯	due process for transfer	▯
g. Legal status of license/licensee			
h. Derogations or exemptions			
i. Size	▯		
ii. Non grid entities			
iii. Self-use only	▯		
i. Voluntary termination and transfer obligations			
j. Power of regulator to impose conditions	▯	incl. technology transfer	
k. Obligations of licencees:	▯		
- duty to supply/ "obligation to serve"	▯	payment proviso	
- non-exclusive areas and service requirements	▯	regulator discretion to alter; can facilitate	
	▯	restructuring	

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- standards of service			
- open access/common carrier		standard open access; needs	
X capability proviso		obligation to expand	
3. Reporting and Accounting Obligations of Licensee			
a. Accounting standards			
b. Filing of accounts			
c. Reporting requirements			
i. Regulatory (economic regulation)			
ii. Owner/shareholders (corporate governance)			
iii. Regulatory (securities regulation)			
4. Pricing/Tariffs			
a. Standards/criteria/principles governing tariffs			
b. Required formulas and regulatory discretion		no deviations w/o regulator approval	
c. Characterization and allocation standards			
d. Application and review processes			
i. Consumer/stakeholder participation			
ii. Reviews and appeals (due process)			
e. Function-specific standards (e.g. transmission)			
5. Industry Restructuring/Reorganization (R/R Provisions)			
a. Legislative delegation of authority			
b. Process for R/R actions			
c. Standards governing reform process			
i. Protection of competition and efficiency			
ii. Consumer protection			
iii. Vested economic interests - preservation			
d. Incorporation provisions			
e. Privatization procedures/legal process			
- transfer schemes			
- employee/personnel rights			
- property devolutions			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- compensation and sale provisions			
- variation agreements			
6. Regulatory Regime (Institutional)			
a. Establishment of regulatory authority/commission	▯		
b. Legal status and capacity of regulator	▯		
c. Functions, powers and duties of regulator -			
governing principles	▯	multiple levels of duties; comprehensive list of functions	▯
d. Relationship with government and regulated			
entities	▯	Minister's ultimate authority	
- regulatory independence - definition		Excessive role of Minister	
e. Composition of Commission members	▯		
i. Qualifications/standards for appointment	▯		
ii. Process for selection and appointment of	▯		
members			
iii. Process for removal of members	▯		
iv. Terms of service: term limits	▯		
f. Power to appoint staff and consultants	▯		
g. {Description of key staff positions}			
h. Codes of conduct for Regulator			
i. Conflicts of interest provisions	▯		
j. Standards governing regulatory actions: constraints,			
limits and relationships			
- tariff regulation			
- competition standards			
- interaction with competition laws and			
authority			
- interaction with technical regulator			
- interaction with local authority regimes	▯	local control w/i area; regulation	▯
- interaction with environmental agencies		overrides for efficiency	
k. Rules for delegation of authority			
- to subsets of Commission	▯		
- to staff	▯		

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- to special tribunals			
- to other entities			
- reference to courts			
l. Scope of regulatory authority/powers			
(i) to establish tariffs and charges	▯		
(ii) to obtain information	▯		
(iii) to conduct inquiries			
(iv) to resolve disputes	▯		
(v) to issue rules, regulations, orders, etc.	▯	Broad scope of regulations: some Board	
		functions by Minister	
(vi) Role, relationship and hierarchy of			
regulatory instruments			
(vii) Appoint and manage staff - delegation to Chair?			
(viii) to grant and supervise licences	▯		
(ix) Supervision of provider/consumer relations			
- establishment of standards of conduct			
- consumer complaints			
- delegation to special tribunals			
- review of consumer discipline by provider			
- penalties			
- suspension of service			
- reinstatement rights			
m. Enforcement of rules and decisions to impose			
penalties			
- identification of offences	▯	supply diversion focus	
- fines	▯		
- license suspension/revocation			
n. Regulatory process			
(i) Processes for decisionmaking			
- representations and due process			
- regulatory accountability			
- transparency of decisional process			
- quasi legislative process			
(ii) Regulatory meetings	▯		
- frequency	▯		
- conduct rules	▯		
- sunshine and confidentiality rules	▯		
	▯		
(iii) Publication and dissemination of decisions	▯		
- reasoned decision-making			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
(iv) Consultation processes			
- consumers			
- other stakeholders			
- government			
- public at large			
o. Reviews and Appeals			
- courts			
- government	▯	appeals to regulator and Minister	
- specialized agencies			
- special tribunals			
p. Dispute Resolution			
- arbitration and mediation			
- regulatory policy decisions			
- complaints			
q. Consistency of regulatory policy with:			
(i) Sector legislation			
(ii) Constitution of country			
(iii) Other generic legislation, e.g. competition			
e.g. competition laws			
(iv) Processes for resolving inconsistencies			
between laws			
- supremacy provisions			
- inter-agency conflict			
- resolution mechanisms			
r. Funding of regulatory functions	▯		
(i) Government funding processes -			
appropriations and levies	▯		
(ii) Levies on regulated entities	▯		
(iii) Budgetary processes of regulator	▯		
(iv) Management of funds/surpluses/deficits	▯		
- fines and penalties	▯		
- other sources (donations)			
(v) Regulatory accounts	▯		

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- standards for transparency	[illegible]		
- audits and accountability: GAAP	[illegible]		
compliance	[illegible]		
- accounting standards	[illegible]		
s. Reporting Requirements: (i. substantive;			
ii. financial)			
(a) To government	[illegible]	i and ii; GAAP compliance	[illegible]
(b) Public reporting/annual report	[illegible]	i and ii	[illegible]
(c) Collection, Protection, Dissemination of			
Information			
(i) non-disclosure rules			
(ii) penalties for disclosure			
7. Technical and Land Use Regulation			
(a) Categories of regulation			
- health and safety standards			
- land use			
- technical standards			
reliability			
safety			
function-specific standards			
(b) Role in Siting Regulation			
- relation to local authorities			
- powers of expropriation; eminent domain	[illegible]		
- certification and siting of facilities			
8. Transitional Provisions	[illegible]		
(a) Transitional provision	[illegible]		
(b) "Grandfathering" provisions (from old regime)	[illegible]		
(c) Repeals	[illegible]		
(d) Effective dates of provision	[illegible]		
- phase-ins			

TANZANIA
USAID/RCSA
Benchmarking Southern African Electricity Regulatory Legislation
Electricity Sector and Regulatory Laws

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
1. Title and scope	▯		▯
2. Licenses to do business - general requirement	▯		▯
a. Exclusivity/restrictive provisions legal basis			
i. Territorial restrictions	▯		
ii. Functional restrictions	▯		
iii. Prohibition on non-authorized activities	▯		
b. Qualifications for license - standards, criteria,	▯		▯
capabilities and duties			
c. Categorization of licenses	▯		
(i) Deintegrated entities	▯		▯
- identification of functions	▯		
- conditions	▯		
- obligations and functions	▯		
(ii) Restrictions on cross-ownership	▯	Regulator can waive	▯
(iii) Trading and import/export rules	▯		
d. Issue, renewal, duration, amendment & transfer	▯		▯
	▯		
e. Suspension and revocation	▯		
	▯		
f. Processes; application for issuance, transfer, etc.	▯		▯
g. Legal status of license/licensee	▯		
h. Derogations or exemptions			
i. Size	▯		
ii. Non grid entities			
iii. Self-use only	▯		
i. Voluntary termination and transfer obligations	▯		
j. Power of regulator to impose conditions	▯		▯
k. Obligations of licencees:	▯		▯
- duty to supply/ "obligation to serve"	▯		
- non-exclusive areas and service requirements	▯		▯
	▯		
- standards of service			
- open access/common carrier	▯		▯
X capability proviso			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
3. Reporting and Accounting Obligations of Licensee			
a. Accounting standards			
b. Filing of accounts	▯		
c. Reporting requirements	▯		
i. Regulatory (economic regulation)			
ii. Owner/shareholders (corporate governance)			
iii. Regulatory (securities regulation)			
4. Pricing/Tariffs			
a. Standards/criteria/principles governing tariffs	▯		▯
b. Required formulas and regulatory discretion	▯		
c. Characterization and allocation standards	▯		
d. Application and review processes	▯		
i. Consumer/stakeholder participation	▯		
ii. Reviews and appeals (due process)	▯		
e. Function-specific standards (e.g. transmission)	▯		
5. Industry Restructuring/Reorganization (R/R Provisions)			
a. Legislative delegation of authority	▯	to Minister	
b. Process for R/R actions			
c. Standards governing reform process			
i. Protection of competition and efficiency			
ii. Consumer protection			
iii. Vested economic interests - preservation	▯	transition provisions	
d. Incorporation provisions	▯		
e. Privatization procedures/legal process	▯		▯
- transfer schemes	▯		▯
- employee/personnel rights	▯	protection safeguards	▯
- property devolutions	▯		▯
- compensation and sale provisions			▯
- variation agreements	▯		▯
6. Regulatory Regime (Institutional)			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
a. Establishment of regulatory authority/commission	[]		[]
b. Legal status and capacity of regulator	[]		[]
c. Functions, powers and duties of regulator -	[]		[]
governing principles	[]		[]
d. Relationship with government and regulated	[]		
entities	[]		
- regulatory independence - definition		no clear independence from Government	
e. Composition of Commission members	[]		
i. Qualifications/standards for appointment	[]		
ii. Process for selection and appointment of	[]		
members			
iii. Process for removal of members	[]		
iv. Terms of service: term limits	[]		
f. Power to appoint staff and consultants	[]		[]
g. {Description of key staff positions}			
h. Codes of conduct for Regulator	[]		[]
i. Conflicts of interest provisions	[]		[]
j. Standards governing regulatory actions: constraints,			
limits and relationships			
- tariff regulation	[]		
- competition standards	[]		
- interaction with competition laws and	[]		[]
authority			
- interaction with technical regulator			
- interaction with local authority regimes	[]		[]
- interaction with environmental agencies	[]		
k. Rules for delegation of authority	[]		[]
- to subsets of Commission	[]		[]
- to staff	[]		[]
- to special tribunals	[]		
- to other entities	[]		
- reference to courts	[]		

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
I. Scope of regulatory authority/powers			
(i) to establish tariffs and charges	[illegible]		
(ii) to obtain information	[illegible]		
(iii) to conduct inquiries	[illegible]		
(iv) to resolve disputes	[illegible]		[illegible]
(v) to issue rules, regulations, orders, etc.	[illegible]		[illegible]
(vi) Role, relationship and hierarchy of	[illegible]		
regulatory instruments			
(vii) Appoint and manage staff - delegation to Chair?	[illegible]		
(viii) to grant and supevise licences	[illegible]		
(ix) Supervision of provider/consumer relations			[illegible]
- establishment of standards of conduct	[illegible]		
- consumer complaints	[illegible]		[illegible]
- delegation to special tribunals	[illegible]		[illegible]
- review of consumer		no clear regime for consumer payment	
- discipline by provider		discipline	
- penalties			
- suspension of service			
- reinstatement rights			
m. Enforcement of rules and decisions to impose	[illegible]		[illegible]
penalties			
- identification of offences	[illegible]		[illegible]
- fines	[illegible]		
- license suspension/revocation	[illegible]		
n. Regulatory process			
(i) Processes for decision making	[illegible]		
- representations and due process	[illegible]		
- regulatory accountability			
- transparency of decisional process			
- quasi legislative process			
(ii) Regulatory meetings	[illegible]		
- frequency	[illegible]		
- conduct rules	[illegible]		
- sunshine and confidentiality rules	[illegible]		
	[illegible]		
(iii) Publication and dissemination of decisions	[illegible]		
- reasoned decision-making			
(iv) Consultation processes	[illegible]		[illegible]
- consumers	[illegible]		[illegible]
- other stakeholders	[illegible]		
- government	[illegible]		

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- public at large			
o. Reviews and Appeals			
- courts	▯		
- government	▯		
- specialized agencies			
- special tribunals			
p. Dispute Resolution			
- arbitration and mediation			
- regulatory policy decisions			
- complaints	▯		
q. Consistency of regulatory policy with:	▯		
(i) Sector legislation	▯		▯
(ii) Constitution of country	▯		
(iii) Other generic legislation, e.g. competition	▯		▯
e.g. competition laws			
(iv) Processes for resolving inconsistencies	▯		▯
between laws			
- supremacy provisions	▯		
- inter-agency conflict	▯		
- resolution mechanisms	▯		
r. Funding of regulatory functions	▯		
(i) Government funding processes -	▯		
appropriations and levies	▯		
(ii) Levies on regulated entities	▯		
(iii) Budgetary processes of regulator	▯		
(iv) Management of funds/surpluses/deficits	▯		
- fines and penalties	▯		
- other sources (donations)	▯		
	▯		
(v) Regulatory accounts			
- standards for transparency	▯		
- audits and accountability: GAPP			
compliance			
- accounting standards	▯		

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
s. Reporting Requirements: (i. substantive;			
ii. financial)			
(a) To government	0	i and ii	0
(b) Public reporting/annual report	0	i and ii	0
(c) Collection, Protection, Dissemination of	0		0
Information	0		0
	0		0
(i) non-disclosure rules	0		0
(ii) penalties for disclosure	0		0
7. Technical and Land Use Regulation			
(a) Categories of regulation			
- health and safety standards			
- land use			
- technical standards	0	establishs specific office of	0
reliability	0	Technical Regulator	0
safety	0		0
function-specific standards			
(b) Role in Siting Regulation			
- relation to local authorities			
- powers of expropriation; eminent domain	0		
- certification and siting of facilities			
8. Transitional Provisions	0		
(a) Transitional provision	0		
(b) "Grandfathering" provisions (from old regime)	0		
(c) Repeals	0		
(d) Effective dates of provision	0		
- phase-ins			

MOZAMBIQUE
USAID/RCSA
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Standard Legal Provisions - Categories	Equivalent Provisions	Commentary (numbers refer to specific Articles)	Good Practice Provision
Adequacy of Definitions	▯	More defined terms of usage needed	
1. Title and scope	▯	Good coverage of purpose (2/3)	▯
2. Licenses to do business - general requirement	▯	Concessions plus subsidiary licences for	
	▯	a) establishment, b) operation	▯
	▯	Public bidding for licences	▯
a. Exclusivity/restrictive provisions legal basis	▯	Concession for one/more activities (9)	
i. Territorial restrictions	▯		
ii. Functional restrictions	▯		
iii. Prohibition on non-authorized activities	▯		
b. Qualifications for license - standards, criteria,	▯	Requirements for Concession (9)	▯
capabilities and duties			
c. Categorization of licenses (Concessions)	▯		▯
(i) Deintegrated entities	▯		▯
- identification of functions	▯	Specific regime for national transmission	▯
- conditions	▯	network (NTN)	
- obligations and functions	▯		
(ii) Restrictions on cross-ownership	▯		▯
(iii) Trading and import/export rules	▯	Concessions and licences required	
d. Issue, renewal, duration, amendment & transfer	▯	Regulations to set detailed requirements	▯
	▯		
e. Suspension and revocation	▯	Detailed processes and standards	▯
	▯	Clear indemnification standards	▯
f. Processes; application for issuance, transfer, etc.	▯	Guidelines needed in regulations	▯
g. Legal status of license/licensee	▯	Specified in Decrees as contract with State	▯
h. Derogations or exemptions			
i. Size	▯		
ii. Non grid entities			
iii. Self-use only	▯		
i. Voluntary termination and transfer obligations	▯	Reversion of assets/rights to	▯

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary (numbers refer to specific Articles)	Good Practice Provision
		State	
j. Power of regulator to impose conditions		In dispute resolution context only	
k. Obligations of licencees:		Specific obligations specified (16)	
- duty to supply/ "obligation to serve"		Clear standards for operation (16)	
- non-exclusive areas and service requirements		Duty to cooperate with suppliers (17)	
- standards of service		Regularity and quality (18) (20)	
- open access/common carrier		Non discriminatory access; tariff standards	
X capability proviso			
3. Reporting and Accounting Obligations of Licensee			
a. Accounting standards		As required by the Commercial Code	
b. Filing of accounts			
c. Reporting requirements			
i. Regulatory (economic regulation)			
ii. Owner/shareholders (corporate governance)			
iii. Regulatory (securities regulation)			
4. Pricing/Tariffs			
a. Standards/criteria/principles governing tariffs			
b. Required formulas and regulatory discretion			
c. Characterization and allocation standards			
d. Application and review processes			
i. Consumer/stakeholder participation			
ii. Reviews and appeals (due process)			
e. Function-specific standards (e.g. transmission)			
5. Industry Restructuring/Reorganization (R/R Provisions)			
a. Legislative delegation of authority			
b. Process for R/R actions			
c. Standards governing reform process			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary (numbers refer to specific Articles)	Good Practice Provision
i. Protection of competition and efficiency			
ii. Consumer protection			
iii. Vested economic interests - preservation	[illegible]		
d. Incorporation provisions	[illegible]		
e. Privatization procedures/legal process	[illegible]	PSP permitted including transmission;	[illegible]
	[illegible]	rights subject to State supremacy	[illegible]
- transfer schemes	[illegible]		[illegible]
- employee/personnel rights	[illegible]		[illegible]
- property devolutions	[illegible]		[illegible]
- compensation and sale provisions			[illegible]
- variation agreements	[illegible]		[illegible]
6. Regulatory Regime (Institutional)			
a. Establishment of regulatory authority/commission	[illegible]	Powers/authorities of Council of Ministers	[illegible]
		defined (6)	
b. Legal status and capacity of regulator	[illegible]	Clearly defined (7)	[illegible]
c. Functions, powers and duties of regulator -	[illegible]	Powers delineated but open (8)	[illegible]
governing principles	[illegible]	Policy objectives specified clearly (5)	[illegible]
		Special role of State defined (4)	
d. Relationship with government and regulated	[illegible]		
entities	[illegible]		
- regulatory independence - definition			
e. Composition of Commission members	[illegible]		
i. Qualifications/standards for appointment	[illegible]		[illegible]
ii. Process for selection and appointment of	[illegible]		
members	[illegible]		
iii. Process for removal of members	[illegible]		
iv. Terms of service: term limits	[illegible]		
f. Power to appoint staff and consultants	[illegible]		[illegible]
g. {Description of key staff positions}			
h. Codes of conduct for Regulator	[illegible]		[illegible]
	[illegible]		
i. Conflicts of interest provisions	[illegible]		[illegible]

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary (numbers refer to specific Articles)	Good Practice Provision
j. Standards governing regulatory actions: constraints,		No review of actions contemplated;	
limits and relationships		advisory only	
- tariff regulation			
- competition standards			
- interaction with competition laws and			
authority			
- interaction with technical regulator			
- interaction with local authority regimes			
- interaction with environmental agencies			
k. Rules for delegation of authority			
- to subsets of Commission			
- to staff			
- to special tribunals			
- to other entities			
- reference to courts			
l. Scope of regulatory authority/powers			
(i) to establish tariffs and charges		advisory role	
(ii) to obtain information		specification of areas; broad powers	
(iii) to conduct inquiries			
(iv) to resolve disputes			
(v) to issue rules, regulations, orders, etc.		role limited to proposals	
(vi) Role, relationship and hierarchy of			
regulatory instruments			
(vii) Appoint and manage staff - delegation to Chair?			
(viii) to grant and supervise licences		advisory role, emphasis on expansion	
(ix) Supervision of provider/consumer relations			
- establishment of standards of conduct			
- consumer complaints			
- delegation to special tribunals			
- review of consumer			
- discipline by provider			
- penalties			
- suspension of service			
- reinstatement rights			
m. Enforcement of rules and decisions to impose		Direct criminal and civil responsibilities -	
penalties		no role for CNELEC	
- identification of offences			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary (numbers refer to specific Articles)	Good Practice Provision
- fines	[illegible]		
- license suspension/revocation	[illegible]		
n. Regulatory process	[illegible]		
(i) Processes for decisionmaking	[illegible]	specialized commission	
- representations and due process	[illegible]		
- regulatory accountability	[illegible]		
- transparency of decisional process	[illegible]		
- quasi legislative process	[illegible]		
	[illegible]		
(ii) Regulatory meetings	[illegible]		[illegible]
- frequency	[illegible]		[illegible]
- conduct rules	[illegible]		[illegible]
- sunshine and confidentiality rules	[illegible]		
	[illegible]		
(iii) Publication and dissemination of decisions	[illegible]		
- reasoned decision-making			
(iv) Consultation processes	[illegible]		[illegible]
- consumers	[illegible]		[illegible]
- other stakeholders	[illegible]		
- government	[illegible]		
- public at large			
o. Reviews and Appeals		Review of CNELEC decisions not contemplated; primarily advisory role	
- courts	[illegible]		
- government	[illegible]		
- specialized agencies			
- special tribunals			
p. Dispute Resolution	[illegible]		
- arbitration and mediation	[illegible]		
- regulatory policy decisions	[illegible]		
- complaints	[illegible]		
q. Consistency of regulatory policy with:	[illegible]		
(i) Sector legislation	[illegible]		[illegible]
(ii) Constitution of country	[illegible]		
(iii) Other generic legislation, e.g. competition laws	[illegible]		[illegible]
e.g. environmental laws	[illegible]		

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary (numbers refer to specific Articles)	Good Practice Provision
(iv) Processes for resolving inconsistencies			
between laws			
- supremacy provisions			
- inter-agency conflict			
- resolution mechanisms			
r. Funding of regulatory functions			
(i) Government funding processes -			
appropriations and levies			
(ii) Levies on regulated entities			
(iii) Budgetary processes of regulator			
(iv) Management of funds/surpluses/deficits			
- fines and penalties			
- other sources (donations)		Conflict issue as to donors	
(v) Regulatory accounts			
- standards for transparency			
- audits and accountability: GAPP			
compliance			
- accounting standards			
s. Reporting Requirements: (i. substantive;			
ii. financial)			
(a) To government		Minister keeps public record	
(b) Public reporting/annual report			
(c) Collection, Protection, Dissemination of			
Information			
(i) non-disclosure rules			
(ii) penalties for disclosure			
7. Technical and Land Use Regulation			
(a) Categories of regulation			
- health and safety standards			
- land use			
- technical standards			
reliability			
safety			

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary (numbers refer to specific Articles)	Good Practice Provision
function-specific standards			
	[illegible]		
(b) Role in Siting Regulation			
- relation to local authorities			
- powers of expropriation; eminent domain	[illegible]	clear standards and safeguards	[illegible]
- water courses-access	[illegible]		
- certification and siting of facilities	[illegible]		
	[illegible]		
(c) Crimes and sanctions	[illegible]		
- theft	[illegible]		
- damages	[illegible]		
- evidence - presumption of violation	[illegible]		
- infractions - violation of licencing laws	[illegible]		
- fraud	[illegible]		
- sanctions - direct fines	[illegible]	amounts specified in law	
	[illegible]		
8. International Relations	[illegible]		
- supremacy of international obligations	[illegible]	makes explicit legal obligation to	[illegible]
- requirement to participate in international arrangements	[illegible]	implement international arrangements	[illegible]
9. Transitional Provisions	[illegible]		
(a) Transitional provision	[illegible]		
(b) "Grandfathering" provisions (from old regime)	[illegible]		
(c) Repeals	[illegible]		
(d) Effective dates of provision	[illegible]		
- phase-ins			

RERA
LESOTHO
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Benchmarking Southern African Electricity Regulatory Legislation
Electricity Sector and Regulatory Laws

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
1. Title and scope	[]		[]
2. Licenses to do business - general requirement	[]		[]
a. Exclusivity/restrictive provisions legal basis	[]		
i. Territorial restrictions	[]		
ii. Functional restrictions	[]		
iii. Prohibition on non-authorized activities	[]		
	[]		
b. Qualifications for license - standards, criteria,	[]		[]
capabilities and duties	[]		
	[]		
c. Categorization of licenses	[]		
(i) Deintegrated entities	[]		[]
- identification of functions	[]		
- conditions	[]		
- obligations and functions	[]		
(ii) Restrictions on cross-ownership	[]	most deleted in 2004 amendments	[]
(iii) Trading and import/export rules	[]		
	[]		
d. Issue, renewal, duration, amendment & transfer	[]		[]
	[]		
e. Suspension and revocation	[]	detailed due process - focus on	[]
	[]	remedies for cure	
f. Processes; application for issuance, transfer, etc.	[]		[]
	[]		
g. Legal status of license/licensee	[]		
	[]		
h. Derogations or exemptions	[]	General Authority discretion to issue/revoke	[]
i. Size	[]		
ii. Non grid entities	[]	select Authority functions (§22(2))	[]
iii. Self-use only	[]	Authority may exempt; require information	[]
i. Voluntary termination and transfer obligations	[]		
	[]		
j. Power of regulator to impose conditions	[]	including central dispatch	[]
	[]		
k. Obligations of licencees:	[]		[]
- duty to supply/ "obligation to serve"	[]		
- non-exclusive areas and service requirements	[]		[]

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- standards of service			
- open access/common carrier		clear non-discrimination clause (§109)	
X capability proviso		comprehensive regime (§108)	
3. Reporting and Accounting Obligations of Licensee			
a. Accounting standards			
b. Filing of accounts			
c. Reporting requirements			
i. Regulatory (economic regulation)			
ii. Owner/shareholders (corporate governance)			
iii. Regulatory (securities regulation)			
4. Pricing/Tariffs			
a. Standards/criteria/principles governing tariffs			
b. Required formulas and regulatory discretion			
c. Characterization and allocation standards			
d. Application and review processes			
i. Consumer/stakeholder participation			
ii. Reviews and appeals (due process)			
e. Function-specific standards (e.g. transmission)			
5. Industry Restructuring/Reorganization (R/R Provisions)			
a. Legislative delegation of authority		to Minister	
b. Process for R/R actions		General provision	
c. Standards governing reform process		Authority's general duties provide guidance	
i. Protection of competition and efficiency			
ii. Consumer protection			
iii. Vested economic interests - preservation			
d. Incorporation provisions			
e. Privatization procedures/legal process		Minister's discretion to issue directives	

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- transfer schemes	[illegible]		[illegible]
- employee/personnel rights	[illegible]		[illegible]
- property devolutions	[illegible]		[illegible]
- compensation and sale provisions	[illegible]		[illegible]
- variation agreements	[illegible]		[illegible]
	[illegible]		
6. Regulatory Regime (Institutional)	[illegible]		
	[illegible]		
a. Establishment of regulatory authority/commission	[illegible]	option of multi-sectoral	[illegible]
	[illegible]		
b. Legal status and capacity of regulator	[illegible]	full corporate powers	[illegible]
	[illegible]		
c. Functions, powers and duties of regulator -	[illegible]	detailed standards (§21) and functions	[illegible]
governing principles	[illegible]	(§22); principles for exercise (§23);	[illegible]
	[illegible]	broad powers (§34)	
	[illegible]		
d. Relationship with government and regulated	[illegible]		
entities	[illegible]		
- regulatory independence - definition	[illegible]	clear delineation; accommodates	[illegible]
	[illegible]	privatisation	
	[illegible]		
e. Composition of Commission members	[illegible]		
i. Qualifications/standards for appointment	[illegible]		
ii. Process for selection and appointment of	[illegible]	clear procedures for selection	[illegible]
members	[illegible]		
iii. Process for removal of members	[illegible]	specific tribunal and standards	[illegible]
iv. Terms of service: term limits	[illegible]		
	[illegible]		
f. Power to appoint staff and consultants	[illegible]	Advisory committees also	[illegible]
	[illegible]		
g. {Description of key staff positions}	[illegible]		
	[illegible]		
h. Codes of conduct for Regulator	[illegible]		[illegible]
	[illegible]		
i. Conflicts of interest provisions	[illegible]	licenced operator-related	[illegible]
	[illegible]		
j. Standards governing regulatory actions: constraints,	[illegible]	principles (§ 23)	
limits and relationships	[illegible]		
	[illegible]		
- tariff regulation	[illegible]	orderly process for setting (§24)	[illegible]
- competition standards	[illegible]		
- interaction with competition laws and	[illegible]	may not be currently relevant	[illegible]
authority	[illegible]		
- interaction with technical regulator	[illegible]	Inspectors and standards detailed	[illegible]

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- interaction with local authority regimes	[illegible]		[illegible]
- interaction with environmental agencies	[illegible]		
	[illegible]		
k. Rules for delegation of authority	[illegible]		[illegible]
- to subsets of Commission	[illegible]		[illegible]
- to staff	[illegible]		[illegible]
- to special tribunals	[illegible]		
- to other entities	[illegible]		
- reference to courts	[illegible]	to enforce orders; arbitration of disputes	
	[illegible]		
l. Scope of regulatory authority/powers	[illegible]		
(i) to establish tariffs and charges	[illegible]		
(ii) to obtain information	[illegible]	mechanism to enforce	[illegible]
(iii) to conduct inquiries	[illegible]		
(iv) to resolve disputes	[illegible]		[illegible]
(v) to issue rules, regulations, orders, etc.	[illegible]	detailed supply rules	[illegible]
(vi) Role, relationship and hierarchy of	[illegible]		
regulatory instruments	[illegible]		
(vii) Appoint and manage staff - delegation to Chair?	[illegible]		
(viii) to grant and supevise licences	[illegible]		
(ix) Supervision of provider/consumer relations	[illegible]		[illegible]
- establishment of standards of conduct	[illegible]		
- consumer complaints	[illegible]		[illegible]
- delegation to special tribunals	[illegible]		[illegible]
- review of consumer payments	[illegible]		
- discipline by provider	[illegible]		
- penalties	[illegible]		
- suspension of service	[illegible]		
- reinstatement rights	[illegible]		
	[illegible]		
m. Enforcement of rules and decisions to impose	[illegible]		[illegible]
penalties	[illegible]		
- identification of offences	[illegible]		[illegible]
- fines	[illegible]		
- license suspension/revocation	[illegible]		
	[illegible]		
n. Regulatory process	[illegible]		
(i) Processes for decisionmaking	[illegible]		
- representations and due process	[illegible]		
- regulatory accountability	[illegible]		
- transparency of decisional process	[illegible]		
- quasi legislative process	[illegible]		
	[illegible]		
(ii) Regulatory meetings	[illegible]	Authority to establish own procedures	

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
- frequency	[illegible]		
- conduct rules	[illegible]		
- sunshine and confidentiality rules	[illegible]		
	[illegible]		
(iii) Publication and dissemination of decisions	[illegible]		
- reasoned decision-making	[illegible]		
	[illegible]		
(iv) Consultation processes	[illegible]		[illegible]
- consumers	[illegible]		[illegible]
- other stakeholders	[illegible]		
- government	[illegible]		
- public at large	[illegible]		
	[illegible]		
o. Reviews and Appeals	[illegible]		
- courts	[illegible]		
- government	[illegible]		
- specialized agencies	[illegible]		
- special tribunals	[illegible]	detailed arbitration process	[illegible]
	[illegible]		
p. Dispute Resolution	[illegible]		
- arbitration and mediation	[illegible]	detailed electricity arbitration code	[illegible]
- regulatory policy decisions	[illegible]		
- complaints	[illegible]		
	[illegible]		
q. Consistency of regulatory policy with:	[illegible]		
	[illegible]		
(i) Sector legislation	[illegible]		[illegible]
	[illegible]		
(ii) Constitution of country	[illegible]		
	[illegible]		
(iii) Other generic legislation, e.g. competition	[illegible]		[illegible]
e.g. competition laws	[illegible]		
	[illegible]		
(iv) Processes for resolving inconsistencies	[illegible]	inconsistencies may not exist	[illegible]
between laws	[illegible]		
- supremacy provisions	[illegible]		
- inter-agency conflict	[illegible]		
- resolution mechanisms	[illegible]		
	[illegible]		
r. Funding of regulatory functions	[illegible]		
	[illegible]		
(i) Government funding processes -	[illegible]		
appropriations and levies	[illegible]		
	[illegible]		
(ii) Levies on regulated entities	[illegible]	may require universal access development	[illegible]

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
		fees	
(iii) Budgetary processes of regulator			
(iv) Management of funds/surpluses/deficits			
- fines and penalties			
- other sources (donations)			
(v) Regulatory accounts			
- standards for transparency			
- audits and accountability: GAPP			
compliance			
- accounting standards			
s. Reporting Requirements: i. substantive			
ii. Financial			
(a) To government		i and ii	
(b) Public reporting/annual report		i and ii	
(c) Collection, Protection, Dissemination of			
Information			
(i) non-disclosure rules			
(ii) penalties for disclosure			
7. Technical and Land Use Regulation			
(a) Categories of regulation			
- health and safety standards			
- land use			
- technical standards			
reliability			
safety			
function-specific standards			
(b) Role in Siting Regulation			
- relation to local authorities			
- powers of expropriation; eminent domain			
- certification and siting of facilities			
8. International Relations			
- supremacy of international obligations		most comprehensive regime	
- requirement to participate in international arrangements			
- respect international environmental standards			
- regional cooperation in regulation			
- permit import/exports		licence required; SAPP rules (Part	

Standard Legal Provisions - Categories	Equivalent Provisions	Commentary	Good Practice Provision
		VII)	
9. Transitional Provisions			
(a) Transitional provision			
(b) "Grandfathering" provisions (from old regime)			
{c} Repeals			
(d) Effective dates of provision			
- phase-ins			